SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 500.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
C. W. LANE, PRODUCERS OIL COMPANY, THE TEXAS COMPANY, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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a UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, Circuit Judges:

C. W. LANE, PRODUCERS OIL COMPANY, THE TEXAS Company and Board of Commissioners of Caddo Levee District, appellants and cross-appellees,

versus

THE UNITED STATES OF AMERICA, APPELLEE AND CROSS-appellant.

Be it remembered, that heretofore, to wit, on the 25th day of May, A. D. 1920, a transcript of the record in the above-styled cause, pursuant to an appeal and cross-appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3536, as follows, to wit:

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA,

versus No. 1153 In Equity.

C. W. LANE, ET AL.

TRANSCRIPT OF APPEAL.

Taken by the Defendants and Cross Appeal Taken by the Plaintiff, to the United States Circuit Court of Appeals, Fifth Circuit, New Orleans, La.

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1 (BILL OF COMPLAINT).

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA. SHREVEPORT DIVISION.

United States of America,
Plaintiff.

vs. No. 1153 In Equity.

C. W. Lane, Producers Oil Company, Texas Company, Board of Commissioners Caddo Levee District,
Defendants.

To the Honorable Judge of the District Court of the United States for the Western District of Louisiana, Sitting within and for the Shreveport Division.

The United States of America, by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General,

acting herein under the direction and by the authority of the Attorney General of the United States, brings this bill of complaint against C. W. Lane, a citizen of Louisiana, and a resident of Shreveport, in the Western District of that State; Producers Oil Company, and Texas Company, corporations organized under the laws of the State of Texas, having their domicile in the City of Houston in that State, and having an office and place of business in the City of Shreveport, in the Western District of Louisiana, with Hampden Story as their agent for the service of process; and the Board of Commissioners of the Caddo Levee District, a political corporation organized under the laws of the State of Louisiana, having its domicile in the City of Shreveport, in the Western District of Louisiana, with W. F. Taylor as its President, and thereupon complains and shows unto your Honor:

I.

That on and before December 15, 1908, the plaintiff was the owner, as a part of its public domain, of a certain tract of land, which was then unsurveyed public land of the United States, but which has since been surveyed under the direction and with the approval of the Secretary of the Interior, and is now known and described as Lot Number One (1) of Section Three (3), in Township Twenty (20), North of Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing five and sixty-seven hundredths acres, as shown by a plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana.

That on and prior to the aforesaid date plaintiff was, and still is, the owner and entitled to the possession of the above described land, and likewise of all oil, petroleum, gas and other minerals therein contained.

II.

On December 15, 1908, in order to conserve the public interests, and in aid of such legislation as might thereafter be proposed, recommended and enacted, the President of the United States, by and through the Secretary of the Interior, and under the legal authority vested in him so to do, duly and regularly withdrew from settlement and entry and from all other forms of appropriation, all of the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, which withdrawal included the lands herein involved.

On the 2nd day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, by executive order, and under special authority conferred by the act of June 25, 1910, entitled "An Act to authorize the President of the United States to make withdrawals of Public lands in certain cases," ratified and confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, above set forth, insofar as it affected the land described herein, including the same as a part of Petroleum Reserve Number Four. That such lands so withdrawn by said order of July 2, 1910, including the land herein involved, were withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been vacated, but both are now in full force and effect, and

said lands above named, including the property involved herein, ever since the date of the first withdrawal, December 15, 1908, have not been subject to exploration for oil, petroleum, gas, or other minerals, or to location or entry of any kind under the general land laws, or mineral laws, of the United States.

III.

Plaintiff avers that notwithstanding said orders of withdrawal, and in violation of the rights of the plaintiff, and contrary to its laws, and without any valid title, lawful right or authority, the defendants herein, in bad faith, entered upon and took possession of the tract particularly described in paragraph I hereof, for the
3 purpose of drilling thereon for oil and gas, and did so drill one well known as "Lane No. 3", and did withdraw therefrom large quantities of oil and gas, the exact amount and value of which is unknown, all to the great and irreparable injury of plaintiff.

IV.

That on and prior to the dates of the withdrawal orders hereinabove set forth, to-wit: December 15, 1908, and July 2, 1910, none of the said defendants or any one from whom the defendants, or any of them, claim, was in the possession of said land, or bona fide occupant thereof in diligent prosecution of work thereon leading to a discovery of oil or gas, and no such discovery was in fact made prior to said orders of withdrawal, nor until long after said orders were issued, and had become effective to withdraw said land from location, entry and other appropriation.

V.

Plaintiff is informed and believes that the oil and gas withdrawn from the said tract of land, as above set forth, was extracted under the color of a pretended lease made on June 6th, 1910, by the Board of Commissioners of the Caddo Levee District to defendant, C. W. Lane, as per an act of record in Book 59, page 554, which said lease was transferred and assigned by the said C. W. Lane to the Producers Oil Company on June 30th, 1910, by an act of record at page 675 of said Book, said instruments having been recorded on the conveyance records of the Parish of Caddo, Louisiana.

Plaintiff avers that said C. W. Lane, said Board of Commissioners of the Caddo Levee District and the said Producers Oil Company, have no right, title or interest in and to the said tract of land, but, acting under the said pretended lease, and not otherwise, and subsequent to the withdrawal orders hereinabove referred to, entered upon the said tract of land, drilled a well thereon, as aforesaid, and took therefrom a large quantity of oil and gas, which the defendant, Producers Oil Company, has marketed and sold to defendant, Texas Company; that the said Producers Oil Company received the price of the oil so produced, marketed and sold by it and paid a royalty therefrom to the Board of Commissioners of the Caddo Levee District and to the said defendant, C. W. Lane, the amount of which is to the plaintiff unknown, the exact quantity of oil and gas so produced, withdrawn from the land and sold, and the value thereof, being unknown to the plaintiff, full discovery from the defendants herein is sought.

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VI.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

VII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of Twenty Thousand ($20,000.00) Dollars, and that all of the defendants herein acted in bad faith in the premises.

VIII.

In consideration whereof and for as much as the plaintiff is without full, adequate and complete remedy in the premises save in a Court of Equity plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That the said lease made on the 6th day of June, 1910, by the Board of Commissioners of the Caddo Levee District to the defendant, C. W. Lane, and by him transferred to the defendant, Producers Oil Company, may be declared null and void and held for naught insofar as the same may include, directly or indirectly, the property in controversy in this cause, and, to that extent, that the said lease and transfers be cancelled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendants or any of them, and that the possession of said land may be restored to the plaintiff. .

5 5. That said defendants, during the progress of this cause and finally and perpetually thereafter, may be enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon the plaintiff's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of boring and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

8. That plaintiff may have such other and further relief as may seem just to this honorable Court and agreeable to equity and good conscience.

May it please the Court that writs of subpoena issue directed to C. W. Lane, the Board of Commissioners of the Caddo Levee District, the Producers Oil Company and the Texas Company, defendants, commanding them at a certain time and under a certain penalty therein to be named, to appear before this honorable Court and then and there full, true and direct answers make to all and singular the premises, and to stand to perform and abide by such order, direction and decree as may be made against them in the premises and as shall be meet and agreeable to equity.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

6 AFFIDAVIT.

United States of America,
Northern District of California.

D. R. THOMPSON, being first duly sworn, deposes and says:

That he is Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing complaint, withdrawn by the President from entry, location and all forms of appropriation by order of December 15, 1908, and July 2, 1910, and that from the examination of such lands, and from examination of the records of the General Land Office and of the local Land Office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing bill of complaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn and subscribed before me this 5th day of July, 1917.

LYLE S. MORRIS,
(Seal) Deputy Clerk United States District Court, Northern District of California.

Indorsed: Bill of Complaint. Filed Jul. 9, 1917.

7 (MOTION TO DISMISS.)

In the District Court of the United States, for the Western District of Louisiana, Shreveport Division.

United States of America,
Plaintiff,
vs. No. 1153 in Equity.

C. W. Lane, Producers Oil Company, Texas Company, Board of Commissioners Caddo Levee District,
Defendants.

Now into Court comes C. W. Lane, one of the defendants herein, and moves this Honorable Court to dismiss the bill of complaint herein filed, in so far as it affects this defendant, for misjoinder and insufficiency of fact to constitute a valid cause of action in equity.

For the further reason that the said bill of complaint is not sufficent under rule 25 of the Equity Rules and for the further reason that the verification, attached to the said bill, is not sufficient.

For the further reason that the defendants named therein are not charged with being joint trespassers and that the causes of action set forth are multifarious.

Wherefore, defendant prays that this motion be allowed and that plaintiff's suit be dismissed as to him, and for all orders needed in the premises.

FOSTER, LOONEY & WILKINSON,
Counsel for Defendant.

State of Louisiana,
Parish of Caddo.

C. W. Lane being duly sworn, deposes and says, I am one of the defendants in the above entitled suit and I further depose and say that the above motion is not interposed for delay.

C. W. LANE.

Sworn to and subscribed before me this 30th day of July, A. D. 1917.

W. A. WILKINSON,
Notary Public.

8 I, Frank J. Looney, hereby certify that I am Solicitor and counsel for C. W. Lane one of the defendants named in the above suit in equity and that in my opinion the motion interposed to the Bill of Complaint of the United States of America, the Complainant in the above cause, is well founded in point of law and proper to be filed in the above cause.

FRANK J. LOONEY.

Indorsed: Motion to dismiss. Filed Jul. 30. 1917.

9 (ANSWER BOARD COMMRS. CADDO LEVEE DIST. & PRODUCERS OIL CO.)

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,
Plaintiff,
vs. No. 1153 In Equity.

C. W. Lane, Producers Oil Company, The Texas Company, Board of Commissioners Caddo Levee District,
Defendants.

The joint and several answers of the Producers Oil Company and the Board of Commissioners of the Caddo Levee District, to the bill of complaint in the above numbered and entitled cause.

Now comes the said defendants, and for answer thereto says:

I.

That they deny that the plaintiff, on the 15th day of December, 1908, was, or since was, or now is, the owner, as part of its public domain, of that certain tract of land designated in the bill of complaint as Lot One (1) of Section Three (3), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, in the State of Louisiana, containing five and 67/100 (5.67) acres, as shown on a plat of survey approved March 28, 1917, by Clay Tallman, Commissioner General of the Land Office and Ex-Officio Surveyor General of the State of Louisiana, reflecting a survey of lands in Township Twenty (20) North, Range Sixteen (16) West, made under the direction and

with the approval of the Secretary of the Interior of the United States, alleged, at the time of and prior to such survey, to be unsurveyed lands of the United States.

Defendants further deny that the plaintiff on, or prior to, the aforesaid date was, or since was, or now is, the owner and entitled to the possession of the aforesaid described tract of land, or of any part thereof, or of any of the oil, petroleum, gas and other minerals therein contained.

Defendants show that there is not, nor was there such a tract of land known as Lot No. One (1), Section Three (3), Township Twenty (20) North, Range Sixteen (16) West, as set out in the bill of complaint herein, and that the purported survey, showing such lot, is illegal, null and void, and the execution and approval thereof beyond the power, jurisdiction, control or authority of the General Land Office of the United States, for the reason, that the said tract of land was not at the date of said survey in the ownership of the United States, but was in private ownership, as will be hereinafter more particularly shown.

II.

Defendants admit that the President of the United States, on December 15, 1908, in order to conserve the public interest, and in aid of legislation as might thereafter be proposed, recommended and enacted, by and through the Secretary of the Interior, withdrew from settlement and entry, and from all forms of appropriation, all of the public lands in Township 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian; but, defendants deny that the said order of withdrawal, if made under legal authority, which is denied, included and embraced, or purported and intended to include and embrace the land here-

in involved, for the reason, as aforesaid, the said land, at the date of said order of withdrawal, formed, or was, no part of the public domain of the United States, but was prior to, and since, said date, and now is, in private ownership, as will hereinafter appear.

Defendants further admit that the President of the United States, by and through the Secretary of the Interior, by executive order, and under special authority conferred by the Act of June 25, 1910, entitled "An Act to authorize the President of the United States to make withdrawal of Public lands in certain cases", ratified and confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, in so far as it affected lands as part of "Petroleum Reserve No. 4," but defendants deny that the tract of land in controversy herein, was involved, or included, or, if so included, it was illegally, wrongfully and erroneously so included, in said order of withdrawal, for the reason that at the date of said order of withdrawal, and since, and prior thereto, the ownership of said land was not in the United States.

Defendants admit that neither of said orders of withdrawal have been vacated, and are still in force and effect,
but deny that said orders of withdrawal in any
11 manner affect the land, in controversy, inasmuch
as said tract of land, at the respective dates of said orders of withdrawal, was not included in said orders, nor was such tract of land in the ownership of the United States.

III.

Defendants deny that they entered upon and took possession of the property herein involved, in violation of the rights, or of any right, or rights, of the United States, plaintiff herein, or contrary to its laws, and, or, without

any valid title, lawful right or authority, or in bad faith; but aver that the Board of Commissioners of the Caddo Levee District, C. W. Lane, and the Producers Oil Company are the legal owners of said land, and the Producers Oil Company, under mesne assignment from said Board of Commisioners of the Caddo Levee District, entered upon and took possession of said property for the purpose of drilling for oil or gas, and the extraction therefrom of oil and gas, and that the said Producers Oil Company did so drill one well on the land herein involved, designated and known as Lane No. 3, and produced therefrom some oil, under lawful authority and an express grant from the said Board of Commissioners of the Caddo Levee District and its immediate assignee, C. W. Lane, the amount and value of which will be hereinafter more specifically set forth.

IV.

Defendants say, that all the allegations of Article IV of the bill of complaint are irrelevant, immaterial and not pertinent to the issues of this case, for the reason, and inasmuch as, as aforesaid, the property herein involved is not, nor was it at any of the dates referred to, the property of the United States; and that the said Board of Commissioners of the Caddo Levee District, the said C. W. Lane, and the said Producers Oil Company, or either of them, do not claim or assert title to said property under any discovery of oil, gas or other minerals, under the mining laws of the United States, but, that defendant Producers Oil Company claims and asserts the right and privilege of exploiting said land herein involved, forming a part of the lands described in the mineral lease executed by the said Board of Commissioners of the Caddo Levee District to C. W. Lane, of date

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June 6, 1910, and that the said Board of Commissioners of the Caddo Levee District claims and asserts, and for a long time past has ever claimed and asserted, title and ownership thereto, under a valid title, from the State of Louisiana, as will be hereinafter fully set out.

V.

Defendants deny that the mineral lease under which oil is being extracted from the land, herein involved, was under color of a pretended lease, but, to the contrary, avers, that the Producers Oil Company did enter on the said property, herein involved, and took possession thereof, in good faith, under and by virtue of a good and valid mineral lease executed by the Board of Commissioners of the Caddo Levee District to C. W. Lane, of date June 6, 1910, and which lease the said C. W. Lane thereafter, to-wit: on June 30, 1910, for the consideration of Six Thousand and Three Hundred ($6,300.00) Dollars, and other consideration, as will be hereinafter shown, transferred and assigned, under warranty of title, all of his right, title and interest therein, to the Producers Oil Company; and it is admitted that the said lease and assignment, referred to in Article V of the bill of complaint, bear the dates of said lease and assignment, and were, respectively and duly, recorded as in the manner and form, and on the dates, as referred to in said bill of complaint.

VI.

Defendants deny that they, the said Board of Commissioners of the Caddo Levee District, said Producers Oil Company and said C. W. Lane, or either of them, had no right, title or interest in the land involved herein, but, aver, that they claim a lawful right and privilege to ex-

ploit said land, lawful ownership of which, as aforesaid, is in the Board of Commissioners of the Caddo Levee District, and that the oil produced therefrom by the said Producers Oil Company, which will be hereinafter shown, inured to its benefit and was sold for its account and that of the Board of Commissioners of the Caddo Levee District and C. W. Lane, in the proportions and in the manner and form as will be hereinafter set forth.

13 VII.

Defendants deny that they are unlawfully trespassing upon the land involved herein, but aver that they are lawfully upon said tract of land, under lawful authority, and have been, and now are, in good faith asserting lawful claims and rights thereto, will continue so to do, and to drill other wells as they may deem proper, in their judgment, or that of either of them, and to operate the same and dispose of, or cause to be disposed of, all oil or gas, if any are produced, from, or on, the property in controversy, as they have, and have had, a lawful right to do so, defendants further deny the right of plaintiff to restrain them from operating on said tract of land, or that plaintiff herein will be irreparably damaged thereby if said injunction be denied, or by any act or conduct of these defendants.

VIII.

Defendants admit that oil has been produced from the land involved herein, but deny that the value of said land and, or, of such oil taken therefrom, exceeds the sum of Twenty Thousand ($20,000.00) Dollars, and, that all, or any, of the defendants herein acted in bad faith in taking, or extracting, said oil, or of entering on the land involved

herein and asserting claims, rights, privilege, and exercising rights of ownership, or other rights and privileges, herein or thereto.

IX.

Defendants further and specially say, that the title to said tract of land, herein involved, and other lands, passed out of the United States to the State of Louisiana as swamp and overflowed lands unfit for cultivation, under and pursuant to the provisions of those certain Acts of Congress, entitled, "An Act to aid the State of Louisiana in draining the swamp lands therein," approved March 2, 1849, and " An Act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," approved September 28, 1850.

X.

Defendants further aver, that the said State of Louisiana, under an Act of the General Assembly of
14 the State of Louisiana for the year 1892, being Act No. 74, entitled an act "To create the Caddo Levee District of the State of Louisiana," etc., approved July 6, 1892, and that certain Act enacted by the said General Assembly of the State of Louisiana during the year 1900, being Act No. 160 thereof, entitled an act "To amend and re-enact Sections 1 and 9 of Act No. 74 of the Session of 1892," approved July 6, 1892, entitled an act " To create the Caddo Levee District of Louisiana," etc., "and more fully designated the territorial boundary of said District, and what lands the State of Louisiana gives, grants and conveys to the Board of Commissioners of said Levee District," approved July 12, 1900, created a levee district known as the Caddo Levee District,"

and more fully designating the boundaries thereof and what lands the State of Louisiana gave, granted and conveyed to the Board of Commissioners of said Caddo Levee District, and that for the purpose of carrying out the objects of said Act in developing a levee system in said district and to enable and provide the Board with resources and manner of raising funds to carry out said system, in order to so protect the land and property in said District from destruction or damage by flood it was thereby, under said Act No. 74 of 1892, and of Act 160 of 1900, of the General Assembly of the State of Louisiana, granted, given, bargained, donated and conveyed, under said original and amended and supplemental Acts of the said State of Louisiana, unto the said Board of Commissioners of the Caddo Levee District, all lands in the Parish of Caddo embraced and situated within Township Twenty (20) North, Range Sixteen (16) West, and other townships within the limits of said District.

XI.

And defendants specially aver, that on the 6th day of July, 1901, a descriptive list of such lands, granted to the said Board of Commissioners of the Caddo Levee District, in pursuance of said Act No. 74 of 1892, and said Act 160 of 1900, was certified to by James N. Smith, Register of the State Land Office of the State of Louisiana, showing and designating that said lands are embraced within the limits of the Caddo Levee District, as created by the aforesaid acts; that on the said 6th day of July, 1901, the said James M. Smith, Register of the State Land Office, aforesaid, and W. S. Frazee, Auditor of the State of Louisiana, under and pursuant to the provisions of said Acts, and at the request of the said Board of Commissioners of the Caddo Levee District, and, for and in behalf of the said State of Louisiana, did

grant and convey to the said Board of Commissioners of the Caddo Levee District all and singular the lands shown by said list so certified to by the said Register of the Land Office of the State of Louisiana, as aforesaid, and that said list of land and transfer were filed for record October 10, 1901, and recorded in Conveyance Book 28 page 329, of the Office of the Clerk and Ex-Officio Recorder of the Parish of Caddo, State of Louisiana; and of said lands so certified to as shown by said list and transfer, there was transferred and conveyed to said Board of Commissioners of the Caddo Levee District the fractional West half (W2) of Section Three (3), Township Twenty (20) North, Range Sixteen (16) West, containing one hundred and four and 20-100 (104.20) acres, and that the tract of land, herein involved, was listed and embraced in, and was, and is, a part of, the lands conveyed by the State of Louisiana to the said Board of Commissioners of the Caddo Levee District.

XII.

Defendants aver that the said Board of Commissioners of the Caddo Levee District executed a mineral lease, under date of June 6, 1910, to C. W. Lane, for the consideration of One Thousand Five Hundred and Eighty ($1,580.-00) Dollars cash, and a share, or royalty, of the oil produced from the following described tract of land, and in which is embraced the tract involved in this controversy, to-wit:

"All that tract of land described by metes and bounds as follows:

Beginning at the Northwest corner of the Northwest quarter of Section 3, Township 20 North, Range 16 West,

Parish of Caddo; running thence East along the North line of said Section 3 to a stake on the traverse line of Jeems Bayou; thence Southerly following the meandering of the said traverse line to the South line of the Northwest quarter of the Southwest quarter of said Section, to the place of beginning, containing sixty three and one fifth (63 1-5) acres of land, more or less; for the purpose of drilling for oil and gas thereon, and for the production of the oil that may be found therein."

16 XIII.

Defendants aver, that, on June 30, 1910, the said C. W. Lane, for the consideration of Six Thousand and Three Hundred ($6,300.00) Dollars, paid to him by the Producers Oil Company, ant other valuable consideration, which will be hereinafter referred to, transferred and assigned to the said Producers Oil Company the said lease executed by the Board of Commissioners of the Caddo Levee District, wherein the said C. W. Lane agreed and obligated himself that, in the event title to the property described in said lease was not valid, to return and reimburse the Six Thousand and Three Hundred ($6,300.00) Dollars to the defendant, Producers Oil Company.

And the said Producers Oil Company, defendant, avers, that on the same day, to-wit: June 30, 1910, the said C. W. Lane executed an instrument in writing, wherein and whereby he reiterated acknowledging the receipt of said Six Thousand and Three Hundred ($6,300.00) Dollars from it, and wherein it was, further, mutually agreed that, as a further consideration for said transfer of said mineral lease, the Producers Oil Company agreed to pay to the said C. W. Lane a royalty on all oil produced and saved on the leased property, of one twenty fourth (1-24) part from any well producing less than two hundred (200)

barrels per day and one twelfth (1-12) part of the excess produced and saved over two hundred (200) barrels per well per day.

XIV.

The Producers Oil Company, defendant, avers, that it drilled three (3) wells on the premises described in the lease of said Board of Commissioners of the Caddo Levee District, designated as Lane 1, 2 and 3, and from which there was produced, from September, 1911, to December, 1916, inclusive, one hundred sixty five thousand eight hundred and eight and 82-100 (165,808.82) barrels of oil, and, that from the total output of oil from said three (3) wells, there was produced from Lane No. 3, fourteen thousand one hundred forty three and 66-100 (14,143.66) barrels of oil from October 11, 1911, to November 30, 1916, inclusive; and that, after said last mentioned date
17 said well No. 3 "petered out" and ceased to produce any more oil, and that the same was then and thereafter abandoned. That the values, or proceeds of the sale, of oil so produced and saved from said well Lane No. 3 were distributed, under the terms of said mineral lease, and the assignment thereof, as follows, to-wit:

Producers Oil Company, eleven thousand seven hundred eighty six and 17-100 (11,786.17) barrels, sold for and at the value of Ten thousand five hundred sixty two and 66-100 ($10,562.66) Dollars; Board of Commissioners of the Caddo Levee District, one thousand five hundred seventy one and 66-100 (1,571.66) barrels, of the value of One thousand five hundred sixty eight and 27-100 ($1,568.27) Dollars; and C. W. Lane, seven hundred eighty five and 83-100 (785.83) barrels, of the true value of Five hundred twenty two and 76-100 ($522.76) Dollars, as shown by

statements marked, respectively, Exhibits "A" and "B", hereto annexed and made parts hereof.

XV.

The Producers Oil Company, defendant, in the alternative, further shows, that the cost incurred and paid for drilling and equipping said well Lane No. 3, amounts in the sum of Eight Thousand seven hundred thirty three and 25-100 ($8,733.25) Dollars, and that the operating expenses, in maintaining said well and handling its production, amounts in the sum of Seven thousand six hundred sixty eight ($7,668.00) Dollars, and that the salvage of said well amounts to the sum of Seven hundred and fifteen and 50-100 ($715.50) Dollars, making a total cost and expenditure on said well in the sum of Seventeen Thousand one hundred sixteen and 75-100 ($17,116.75) Dollars, subject to a credit of material recovered from the said well in the amount, or sum, of One thousand sixty nine and 20-100 ($1,069.20) Dollars, making a net cost and expenditure of Sixteen thousand forty seven and 55-100 ($16,047.55) Dollars, as shown by bills of particulars hereto annexed and made parts hereof, marked Exhibits "C" and "D", respectively.

XVI.

Producers Oil Company, defendant, further and specially avers that it drilled on the said land said well Lane No. 3, under the mineral lease of the said Board
18 of Commissioners of the Caddo Levee District to the said C. W. Lane, as aforesaid, and took possession thereof for the purpose of developing the same for oil or gas, acting in good faith and in the belief that the title to said land was validly and legally vested in

the said Board of Commissioners of the Caddo Levee District, as owners, and that all of its acts and conduct, as well as those of said Board of Commissioners of the Caddo Levee District, thereunder, were in absolute good faith; and that in the event it should be held that plaintiff is the owner of said tract of land, herein involved, that Producers Oil Company, defendant, should be, and is, entitled to be reimbursed the entire cost and expenses of drilling, equipping, operating and maintaining said well Lane No. 3, as aforesaid, before it can be held liable for any oil extracted therefrom.

XVII.

Defendant, further answering, and in the alternative, says, that if it should be held that the title, or ownership, to the said land in controversy, described in Article I of the bill of complaint herein, did not pass out of the plaintiff to the State of Louisiana under the Acts of Congress approved March 2, 1849, and September 28, 1850, as aforesaid, and that the said tract of land, at the date of and from and since the passage of said Acts and of their going into force and effect, was not swamp and overflowed land, then, in that event, the said Producers Oil Company, and the said Board of Commissioners of the Caddo Levee District, co-defendant, aver that the plaintiff has no right, title and interest in the said tract of land, herein involved, for the reason, that on the 26th day of September, 1906, the said United States, plaintiff herein, issued, under and pursuant to the Act of Congress approved May 20, 1862, "To secure homestead to actual settlers on the public domain," and Acts supplemental thereto, issued a patent according to the official field notes and plat of survey, to the Northwest quarter (NW4) of Southwest quarter (SW4), Northeast quarter (NE4) of South-

west quarter (SW4) and fractional Southwest quarter (SW4) of Northwest quarter (NW4) of Section
19 Three (3), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, to the heirs of John Russell; that the said Northwest quarter (NW4) of Southwest quarter (SW4) and fractional Southwest quarter (SW4) of Northwest quarter (NW4) of said Section Three (3), Township and Range aforesaid, borders on and adjoins Jeems Bayou, or Ferry Lake, a navigable body of water, and that at the date of the issuance of said patent, in accordance with the official field notes and plat of survey of the General Land Office of the United States, and of the entry of said lands by John Russell, the same bordered on said lake, or navigable body of water, and that the said lake, or navigable body of water, was, and is, the boundary line of said tract of land, and was not bounded by any meander line; the actual boundary line of the said land so patented to said heirs of John Russell bordering on said body of water extended to, and was, and is, bounded and limited, on the West side thereof, by the ordinary, or mean high water of said Jeems Bayou, or Ferry Lake, at the date of the admission of Louisiana into the Union, leaving no land in the ownership of the United States between said meander line and the ordinary high water of said lake, or navigable body of water, and that the Department of Interior was without jurisdiction, power or authority to cause the said tract of land, in controversy, to be surveyed.

XVIII.

That the said Producers Oil Company further avers, that, in the event the tract of land, in controversy, be declared to be in the ownership of the plaintiff, and it be evicted therefrom, then, there should be reserved to

this defendant, the Producers Oil Company, the right to sue and recover, over and against C. W. Lane on his warranty of the title of the land, the price paid by this defendant to him for the transfer and assignment of all of his rights, title and interest in that certain lease executed by the Board of Commissioners of the Caddo Levee District, of date June 6, 1910, heretofore referred to, and for all damages which may be occasioned by said eviction.

Wherefore, having thus made full answer to all the matters and things contained in the bill of complaint, this defendant prays the said bill be dismissed and for judgment for its costs in this behalf incurred.

In the alternative, in the event the Court should hold that the plaintiff is the owner of the tract of land, or property, in controversy, then defendant, Producers Oil Company, prays that it may be adjudged not liable to plaintiff on account of the oil taken or extracted from said property until plaintiff shall have reimbursed defendant for the drilling, equipping, operating and maintaining the well from which said oil was produced and saved, and all incidental charges in handling, preserving, storing and transporting and selling of said oil, and that, in any event, if this relief be refused, that it be adjudged that the cost and expenses of drilling, equipping and operating said well, being in excess of the total value of the oil produced therefrom, that this defendant and its co-defendants, or either of them, are not to be held liable to the plaintiff in and for any amount.

Defendant, Producers Oil Company, further prays, that, in the event it be evicted and disturbed in the possession of said property herein involved, or from exercising any rights of drilling thereon, for oil or gas, there be reserved to defendant its right to sue and recover of C. W. Lane the price paid to him by this defendant for the transfer

and assignment of that certain lease of the Board of Commissioners of the Caddo Levee District, of date June 6, 1910, and for all such damages as may be occasioned by such eviction.

And finally, defendants further pray for all necessary orders in the premises, and for all general and equitable relief, and for all such as they may be entitled to from the facts and evidence which may be adduced on the trial hereof.

HAMPDEN STORY,
Solicitor for Producers Oil Company.

THIGPEN & HEROLD,
WILLIAM C. BARNETTE,
Solicitors for Board of Commissioners of the Caddo Levee District.

21 Indorsed: Answer of Board of Commissioners of Caddo Levee District and Producers Oil Company. Filed Aug. 21, 1917.

22 (PLTFF'S REPLY TO SET OFF AND COUNTER CLAIM)

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,
Plaintiff,
vs. No. 1153 In Equity.

C. W. Lane, Producers Oil Company, The Texas Company, Board of Commissioners of Caddo Levee District,
Defendants.

1.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and renewing and reaffirming the allegations of the original bill of complaint filed herein, for reply to the set off and counterclaim asserted by the Producers Oil Company, and included in the answer of the Producers Oil Company and the Board of Commissioners of the Caddo Levee District, denies all the allegations of the defendant's answer, and, particularly, paragraphs 14, 15 and 17, and the prayer of said answer, as well as all other portions thereof, relating to the said set off and counterclaim.

2.

Plaintiff further shows that the said defendant is not entitled to any set off, or counterclaim, whatever, in the premises, further replying, plaintiff avers that the said

defendant entered upon the land described in the bill of complaint herein, drilled a well thereon and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendant
23 was a wilful and knowing trespasser on said land.

3.

Plaintiff further shows, in the alternative, that even if the said defendant is entitled to a set off or counterclaim in any amount, which is denied, the sum claimed by the defendant is excessive and should not be allowed.

Wherefore, plaintiff prays that the set off and counterclaim asserted by the defendant be denied and disallowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint herein.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed: Plaintiff's reply to Defendant's (Producers Oil Company) Set off and Counterclaim. Filed Aug. 25, 1917.

24 (ANSWER OF THE TEXAS COMPANY)

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,
Plaintiff,
vs No. 1153 In Equity.

C. W. Lane, Producers Oil Company, The Texas Company, Board of Commissioners Caddo Levee District,
Defendants.

The answer of The Texas Company to the bill of complaint herein, and for answer thereto says:

I.

That, not denying, or admitting, any of the matters or things in said bill of complaint, excepting as they may have any materiality or pertinency to its defense herein, says, that it commenced, on or about January, 1911, and for a long time thereafter, from time to time, and on various and divers occasions, up to and including November, 1916, and still is, taking oil from wells drilled on the property leased by the Board of Commissioners of the Caddo Levee District to C. W. Lane, bearing date the 6th day of June, 1910, and which said lease was, by the said C. W. Lane, transferred and assigned to Producers Oil Company, of date June 30, 1910, as referred to in Article V of the bill of complaint, but defendant avers, that it is unable to state what quantities of oil, so received into its pipe line, came from any particular wells drilled on said leased property; that the oil produced from wells drilled on said leased premises was run and delivered into its pipe lines

by the Producers Oil Company, as coming from all wells, and not from any particularly designated well.

II.

Defendant avers, that on January 1, 1911, the said Producers Oil Company, Board of Commissioners of the Caddo Levee District, and C. W. Lane, executed a division order, or agreement, to The Louisiana Company, the transferror, or assignor, of The Texas Company, wherein and whereunder they declared, certified and guaranteed said The Louisiana Company, assignor of this defendant, whose pipe lines this defendant acquired, that they were the legal owners of the wells numbered 1 and up, drilled
25 on the Northwest corner of the Northwest quarter of Section 3, Township 20, Range 15 (intended to be 16), being 63 1-5 acres of land, situated in the parish of Caddo, Louisiana, and directing said The Louisiana Company to credit to Producers Oil Company one hundred per cent of the oil so run into its pipe lines, now the property of The Texas Company, for transportation. That, thereafter, to wit: on May 1, 1916, said Board of Commissioners of the Caddo Levee District, C. W. Lane, and Producers Oil Company, executed to said The Texas Company a second division order, or agreement, wherein and whereunder they again declared, certified and guaranteed that they were the owners of the wells numbered 1, 3 and 4, drilled on 63 1-5 acres out of section 3, Township 20, Range 16, Caddo parish, and that the oil so received and delivered by them into the pipe line of The Texas Company for transportation, after the 1st day of May, 1916, should be credited to the parties to said division order as follows: To the Board of Commissioners of the Caddo Levee District, one eighth (1-8); to C. W. Lane, one twenty fourth (1-24); to Producers Oil Com-

twenty fourth of such oil, so run to the pipe lines of The Texas Company, from May 1, 1916, to September 30, 1916, inclusive, amounting to three hundred and 69-100 (300.69) barrels, of the value of Four hundred one and 48-100 ($401.48) Dollars, was paid by this defendant to the said C. W. Lane, and that one twenty fourth of such oil, so run to the pipe lines of The Texas Company, from October 1, 1916, to November 30, 1916, inclusive, amounting to One hundred and ten and 30-100 (110.30) barrels, valued at Ninety nine and 27-100 ($99.27) Dollars, is held in suspense by this defendant for account of said C. W. Lane.

That this defendant, upon being apprised by the United States District Attorney that suit would be instituted for the recovery of the oil produced from the premises in controversy, herein, by this plaintiff, withheld payments of the royalty oil from said leased premises, however, paying said Producers Oil Company for its five sixths of such oil, as hereinabove shown. That said royalty, as above set forth, is now held in suspense by this defendant.

IV.

Defendant denies that it took said oil into its pipe line in bad faith, but avers that it accepted said oil, as run into its pipe line for transportation, from the wells drilled on the premises described in the lease of the Board of Commissioners of the Caddo Levee District to the said C. W. Lane, and thereafter transferred to the Producers Oil Company, in good faith and for the respective accounts of all parties to said lease, and bought the same in good faith, believing, as it still believes, that the Producers Oil Company, Board of Commissioners of the Caddo Levee District and C. W. Lane were, and are, the lawful owners of all of the oil produced from said described premises, in the proportions as reflected by said division orders.

V.

Defendant further avers, that it does not know, and is not informed, which one of the well or wells drilled on said property is, or are, on the land in controversy, but that said oil, so received from Producers Oil Company, Board of Commissioners of the Caddo Levee Dis-
28 trict, and C. W. Lane, into its pipe line, was not received or taken into its pipe line from any particular, separate, or distinct, or designated, well or wells, but that all of said oil was run from and taken from all wells drilled on said leased premises producing oil, without reference to any particular or designated well, and that it is unable to state with any degree of particularity and certainty the amount of oil run from any, or from each, of the wells drilled on the property in controversy, in this cause, into its pipe line, and that prior to taking said oil into its pipe line it was advised that the ownership of said land, on which said wells were drilled, was lawfully vested in said Board of Commissioners of the Caddo Levee District by good and valid title, and that such oil was taken into its pipe line in the belief, and in good faith, that this was and is the fact.

VI.

Defendant avers, that it is informed by Producers Oil Company that oil produced from well Lane No. 3, referred to in the bill of complaint, was first run and delivered to the pipe line of this defendant in the month of October, 1911, and that said well Lane No. 3 ceased producing and did not produce any further oil, from said leased premises, after the month of November, 1916, the said well being now totally abandoned.

Wherefore, defendant, having made full and complete answer to the matters and things required of it in plaintiff's bill of complaint, prays that said bill of complaint be dismissed, and for judgment in its behalf for all costs incurred herein.

And, finally, defendant prays for all general and equitable relief in the premises, and for all such as it may be entitled to from the evidence and facts adduced on the trial hereof, and for all necessary orders and decrees as may seem proper in equity and good conscience, and from the nature of this case.

As it ever prays.

HAMPDEN STORY,
Solicitor for the Texas Company.

29 Indorsed: Answer of the Texas Company, defendant. Filed Aug. 27, 1917.

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30 (MOTION TO DISMISS BY THE TEXAS CO.)

United States District Court for the Western District of Louisiana, Shreveport Division.

United States of America,

vs. No. 1153 In Equity.

C. W. Lane, Et Al.

Now into Court comes The Texas Company, one of the Defendants in the above entitled and numbered cause, and moves this Honorable Court to dimiss the bill of complaint herein filed as to it, on the grounds as follows, to-wit:

1.

Misjoinder of parties defendant;

2.

Insufficiency of facts to constitute a valid cause in equity.

3.

That the said bill of complaint is insufficient under Rule 25 of the Equity Rules;

4.

That the verification attached to said bill of complaint is not sufficient;

5.

That this defendant is not charged, in said bill of complaint, as a joint trespasser, extracting the oil and gas from the land in controversy, nor with having committed trespass thereon, nor with having advised, encouraged or conspired and co-operated to do so, the only allegation in said bill of complaint, in said suit, being substantially and to the effect that this defendant bought and sold the oil so produced from the land, in controversy, from the said C. W. Lane and the Board of Commissioners of the Caddo Levee District and the said Producers Oil Company, the other defendants in said suit;

6.

That there is no accounting necessary between it and the plaintiff in any sense as to give a Court of Equity jurisdiction on that ground;

7.

That the suit of the plaintiff is one arising in tort, and cannot be converted into one of an accounting, being a cause of trespass, or tort, for which it is not liable.

31 Wherefore, defendant prays that this motion be allowed and plaintiff's suit be dismissed at its costs, and for all necessary orders in the premises.

HAMPDEN STORY,
Attorney for the Texas Company.

Indorsed: Motion to dismiss, on the part of the Texas Company, Hampden Story, Attorney. Filed Feb. 26, 1918.

United States District Court for the Western District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1153 In Equity.
C. W. Lane, Et Al.

Now into Court comes Producers Oil Company, one of the Defendants in the above entitled and numbered cause, and moves this Honorable Court to dismiss the bill of complaint herein filed, on the grounds as follows, to-wit:

1.

Misjoinder;

2.

Insufficiency of facts to constitute a valid cause of action in equity;

3.

That the said bill of complaint is insufficient under Rule 25 of the Equity Rules;

4.

That the verification attached to said bill of complaint is not sufficient;

5.

That the defendants named in said bill of complaint are not charged with being joint trespassers, and that the causes of action set forth are multifarious.

Wherefore defendant prays that this motion be allowed, and plaintiffs suit be dismissed at its cost, and for all necessary orders in the premises.

HAMPDEN STORY,
Attorney for Producers Oil Co.

32 Indorsed:—Motion to Dismiss on the Part of the Producers Oil Company. Hampden Story, Attorney. Filed Feb. 26, 1918.

33 (MINUTE SHOWING OVERRULING OF MOTION TO DISMISS).

Equity Journal, Vol. 1.

United States District Court, Western District of Louisiana.

Wednesday, Shreveport, La., February 27, A. D. 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,
vs. No. 1153 In Equity.
C. W. Lane, et als.

This cause came on this day to be heard upon the Motions to Dismiss and upon the Motions to Strike Out Certain Interrogatories heretofore filed herein by defendants, Robert A. Hunter, Esq., Special Assistant to the Attorney General appearing as Solicitor for the Complainant and Mr. Frank Looney, Judge Hampden Story, Judge J. C. Pugh and Wm. C. Barnette, Esq., appearing as solicitors for defendants.

The said motions were argued by counsel for either side and submitted, and thereupon the Court overruled the said Motions to Dismiss, to which ruling of the Court, the defendants reserved bills of exceptions. The Motions to Strike out certain Interrogatories were sustained as to the Texas Company and the Standard Oil Company, with leave for the Complainant to renew said interrogatories

at such time as may seem proper—the Motions to Strike out certain interrogatories as to the Producers Oil Company being overruled by the Court.

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34 (ANSWER OF C. W. LANE TO BILL OF COMPLAINT).

In the District Court of the United States, for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,
vs. No. 1153, In Equity.
C. W. Lane, Producers Oil Company, The Texas Oil Company, Board of Commissioners Caddo Levee District, Defendants.

C. W. Lane, for answer to the bill of complaint thereto says:

I.

Defendant specifically denies that the United States of America is owner of the land described as Lot No. 1 of Section 3, in Township 20 North of Range 16 west, Louisiana Meridian, situated in the Parish of Caddo, Western District of Louisiana, containing five and sixty-seven hundredths (5.67) acres, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and Ex-Officio Surveyor General for the State of Louisiana.

Defendant further denies that the United States of America is the owner of, or is entitled to, the possession of said land or any oil, gas or other minerals therein contained.

II.

Defendant admits that the President of the United States, on December 15, 1908, withdrew from settlement and entry all of the public lands in Townships 15 to 23 North and Ranges 10 to 16 West, Louisiana Meridian; and admits that on July 2, 1910, said order as above admitted was confirmed.

Defendant denies that the land above described was included by description in such withdrawal orders; and, further, in the alternative, that if so included, that it was public land.

Defendant further denies that all other forms of appropriation were or could be legally included in such withdrawal orders.

Defendant further denies that said lands were included because at the date of the withdrawal the said lands were legally and validly claimed as lands belonging to the Caddo Levee Board.

Defendant further denies that since December 15, 1908, the above described lands have not been subject to exploration for oil, petroleum, gas and other minerals.

35

III.

Defendant denies that he entered the land above described in bad faith, without valid title and contrary to any laws or legal orders in violation of plaintiff's rights.

Defendant further denies that he drilled a well on the land and has withdrawn therefrom large quantities of oil and gas to the great and irreparable injury of plaintiff.

IV.

Defendant denies that no one of defendants was in possession of the said land on December 16, 1908, and shows

that on said date the Board of Commissioners of the Caddo Levee District was in legal possession under color of title from the State of Louisiana, and on July 2, 1910, the Producers Oil Company and the Board of Commissioners of the Caddo Levee District, lessee and lessor under an oil and mineral lease and the above deed, were in possession.

V.

Defendant admits that an oil and mineral lease was made to defendant by the Board of Commissioners of the Caddo Levee District on June 6, 1910, and transferred and assigned to Producers Oil Company on June 30, 1910.

Defendant denies that he ever drilled a well on said land and shows that under his assignment and transfer to the Producers Oil Company, as above admitted, he had no right to drill such a well. He further denies any knowledge of the course of conduct of the Producers Oil Company and while admitting that he received money from the Producers Oil Company under the lease transferred by him, shows that he never received any separate accounting of any sort showing that he received any oil drawn from the above described land or any money from any oil so produced.

VI.

Defendant denies that he is trespassing on above described lands or intends drilling any wells or drawing any oil or gas therefrom.

VII.

Defendant denies that the value of the oil and gas is anything like twenty thousand dollars or that this defendant has ever acted in bad faith in the premises.

36

VIII.

Defendant, pleading in the alternative adopts paragraph XVII of the answer of its co-defendants, the Producers Oil Company, and the Board of Commissioners of the Caddo Levee District.

IX.

Defendant further shows that in event of his eviction he should have the right to sue and recover over against the Board of Commissioners of the Caddo Levee District such sum as may be proportionately due under the warranty in its lease to defendant as well as damages occasioned by said eviction.

Wherefore, after having thus made full answer to all the facts upon which plaintiff relies in the bill of complaint, this defendant prays that said bill be hence dismissed and judgment rendered against plaintiff in this defendant's favor for all costs through this incurred.

Defendant further prays in the alternative for reservation of his right to sue the Board of Commissioners of the Caddo Levee District for the proportionate amount due under the warranty in its lease to defendant and the damages occasioned, in event of judgment in favor of the plaintiff herein.

Defendant further and finally prays for all necessary orders in the premises, for all general and equitable relief, and such specific relief as the facts adduced on trial shall show he may be entitled.

FRANK LOONEY,
J. M. FOSTER,
C. M. WILKINSON,
Solicitors for C. W. Lane.

Indorsed: Answer of C. W. Lane. Filed Mar. 9, 1918.

37 (INTERROGATORIES PROPOUNDED BY PLAINTIFF TO THE PRODUCERS OIL COMPANY AND THE TEXAS COMPANY).

(1).

State whether or not the Producers Oil Company drilled on Lot 1 of Section 3, T. 20, N. R. 16 W., the well known as Lane No. 3.

(2).

State when the said well was commenced and when it was completed.

(3).

Did said well produce oil, and was said oil or the proceeds of the sale thereof, converted to the use and benefit of the defendants in this cause?

38 (4).

During what period was said well operated in the production of oil, and, when, if at all, did it cease to produce oil?

(5).

State how much oil was extracted and removed by the Producers Oil Company, or any other defendant, from the land in controversy, (a) from the time said well began producing up to July 1, 1917, and (b) from July 1, 1917, to January 1, 1918.

(6).

State whether or not the said well was operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

(7).

Was a separate and complete record kept by the Producers Oil Company, or any other defendant, of the oil produced by Lane No. 3. If so, state how said record was kept, and attach to your answers a copy of said record. If your answer is in the negative explain why such record was not kept.

(8).

Was a record of any kind kept by the Producers Oil Company, or any other defendant, while said well was in operation, showing the amount of oil produced therefrom, by the day, week, month, year, or any period? If not, state why no record of the production of such well was kept.

(9).

If you have said in answer to the foregoing interrogatories, that no record of any kind was kept of the production of said well, then state whether there is any way, or method, by which the actual, or approximate, production of said well may be ascertained. If so, state such method.

(10).

State whether or not the production of the well in suit, as given in your answers to the preceding interrogatories,

and in the answer of the Producers Oil Company to the bill of complaint herein, is exact, or is based upon an estimate of any kind.

39 (11).

If said production is based upon an estimate of the quantity of oil produced by Lane No. 3 in connection with other wells not in suit, then state, (a) the total production of all wells operated in conjunction with Lane No. 3, (b) where such wells are located, and (c) the names of all such wells.

(12).

If the production of Lane No. 3 as given in the answer of the Producers Oil Company to the bill of complaint, and in your answers to the preceding interrogatories, is estimative and not exact, then state the manner in which you arrived at, or figured, the production of such well.

(13).

What was the initial production of Lane No. 3, and the total production, by months, of said well during the period of its operation?

(14).

State where and from whom the data, or information, relative to the production of said well, as given in the answer of the Producers Oil Company to the bill of complaint herein, was obtained. Give names and addresses of persons from whom such data, or information was secured.

(15).

What was the total value of the oil produced by the well known as Lane No. 3? State whether the value as given by you in your answer to this question is exact or approximate.

(16).

Was not the oil taken from said well sold by the Producers Oil Company to The Texas Company?

(17).

What was the total price received by the Producers Oil Company for all the oil produced by the well in controversy?

(18).

What was the total price received by the Producers Oil Company for all the oil produced by Lane No. 3, and any other wells that may have been operated in connection with said well?

(19).

Where and in what manner was the oil above mentioned delivered to the purchaser?

(20).

Was not said oil delivered to the purchaser on the land where it was produced by transfer from a tank, or tanks, in which the oil was stored to a pipe line, and did not said pipe line belong to The Texas Company?

(21).

What relation existed between the Producers Oil Company and The Texas Company at the time said oil was sold by the Producers Oil Company to Texas Company?

(22).

Is it not a fact that the Producers Oil Company sold all of the oil produced by it to The Texas Company during the time said well was in operation?

(23).

State whether or not said corporations, namely Producers Oil Company and The Texas Company were, or not, managed by the same officers, or directors, and whether the management of each was not the same at the time of the production and sale of oil from said well?

(24).

Was not the Producers Oil Company engaged in the drilling of wells and the production of oil, and was not The Texas Company engaged in the manufacture and sale of the oil produced by the Producers Oil Company at the time said well was drilled and operated?

(25).

What are the principal products manufactured from petroleum, or crude oil?

(26).

State the total value, either exactly, if you know, or approximately if you do not know positively, of the products manufactured by The Texas Company from the oil taken from the land in controversy.

41 (27).

State to what extent, if any, the Producers Oil Company participated in the profits derived from the manufacture of the oil taken from the land in controversy, and the amount so received by it from such profits.

(28).

How much money was paid as royalty by the Producers Oil Company or The Texas Company to C. W. Lane and the Board of Commissioners of the Caddo Levee District, defendants herein, out of the proceeds of the sale of oil taken from the land in controversy?

(29).

Did said well produce any gas either in merchantable quantities or sufficient in amount for use on the operation of said well, or other wells? In either event, state what disposition was made of such gas and what was its value.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Note: All of the above interrogatories are to be answered by the Producers Oil Company and by The Texas Company.

Indorsed:—Application and Order to File Interrogatories, and Interrogatories to be answered by the Producers Oil Company and The Texas Company. Filed Feb. 1, 1918.

42 (MOTION TO STRIKE OUT INTERROGATORIES NOS. 25, 26 and 27).

United States District Court for the Western District of Louisiana. Shreveport Division.

United States of America, Complainant,
vs. No. 1153 In Equity.
C. W. Lane, Board of Commissioners of Caddo Levee District, Producers Oil Company, The Texas Company, Defendants.

In the above entitled matter, now comes The Texas Company, one of the defendants, through its undersigned counsel, and on suggesting to the Court that the plaintiff has propounded to it interrogatories in writing for discovery, as provided by Equity Rule 58, among which are the Interrogatories Nos. 25, 26 and 27, as follows:

Interrogatory No. 25: What are the principal products manufactured from petroleum, or crude oil?

Interrogatory No. 26: State the total value, either exactly, if you know, or approximately if you do not know positively, of the products manufactured by The Texas Company from the oil taken from the land in controversy.

Interrogatory No. 27: State to what extent, if any, the Producers Oil Company participated in the profits derived from the manufacture of the oil taken from the land in controversy, and the amount so received by it from such profits.

Now, this defendant avers that it will fully appear from the bill of complaint and the answers herein filed on the

part of The Texas Company, that the only facts and issues between the plaintiff and this defendant is the amount and value of the oil run into its pipe line by, or that may have been bought by it from, the Producers Oil Company, C. W. Lane and the Board of Commissioners of Caddo Levee District, produced from wells drilled on the property in controversy, the ownership of which is claimed by the plaintiff; that from the issues so tendered and made by the bill of complaint, the answers to these interrogatories could not, in any wise, tend to support the demands of the plaintiff against the defendant, and are, therefore, irrelevant, incompetent and immaterial to any issues or matters involved in said cause as between the plaintiff and this defendant; and answer thereto would not elicit any fact or facts material, relevant or competent to the support of plaintiff's action, and that said in-
43 terrogatories should and ought to be stricken out.

Wherefore, this defendant prays, that, after due consideration, said interrogatories be stricken out, and that this defendant be dispensed with the necessity of answering the same.

It prays for all such rules, orders and decrees; and for all costs and general relief.

HAMPDEN STORY,
Attorney for The Texas Company.

Service accepted. All rights reserved. This Feb. 11, 1918.

ROBERT A. HUNTER,
Spl. Asst. to the Atty. General.

Indorsed:—Motion to Strike out Interrogatories Nos. 25, 26 and 27 Propounded to The Texas Company. Hampden Story, Atty. Filed Feb. 11, 1918.

44 (ANSWER OF PRODUCERS OIL CO. TO INTERROGATORIES).

United States District Court for the Western District of Louisiana. Shreveport Division.

United States of America,
vs. No. 1153.
C. W. Lane, Board of Commissioners of Caddo Levee District, Producers Oil Company, The Texas Company.

Now comes Producers Oil Company, and files herein the answers of said Company, through C. N. Scott, its Vice-President, and Otto Hartung, its Chief Accountant, to the interrogatories propounded by the plaintiff, in the above cause, excepting Interrogatories Nos. 25, 26 and 27, motion having been made to strike them out, and excepting Interrogatories Nos. 21, 22, 23 and 24, which are answered by T. J. Donoghue, Vice-President of The Texas Company.

By Its Attorney,
HAMPDEN STORY.

United States District Court for the Western District of Louisiana. Shreveport Division.

United States of America, Complainant,
vs. No. 1153 In Equity.
C. W. Lane, Board of Commissioners of Caddo Levee District, Producers Oil Company, The Texas Company.

In the above entitled cause C. N. Scott, Vice-President of Producers Oil Company, appears and answers interrog-

atories propounded to the Producers Oil Company as follows:

Interrogatory No. 21:

What relation existed between the Producers Oil Company and The Texas Company at the time said oil was sold by the Producers Oil Company to The Texas Company?

Answer to Interrogatory No. 21:

The relation that existed between these two corporations was that of contract. There existed during
45 that time a contract or contracts under which the Texas Company agreed to purchase from Producers Oil Company, and Producers Oil Company agreed to sell and deliver, all oil produced in the field where the wells involved in this suit are located, paying therefor the market or posted price. For a time there was a limit as to the minimum amount that The Texas Company undertook to buy and pay for, but this limit was not exercised as to the particular oil in controversy, and The Texas Company under said contract bought and paid for all the oil produced from the wells involved in this litigation.

Interrogatory No. 22:

Is it not a fact that the Producers Oil Company sold all of the oil produced by it to The Texas Company during the time said wells were in operation?

Answer to Interrogatory No. 22:

The Texas Company purchased all the oil produced by Producers Oil Company from the wells involved in this suit during the time the wells were operated by Producers Oil Company. It did not however, during this period buy

all the oil produced by Producers Oil Company everywhere. There was oil produced by that Company and sold to other parties than The Texas Company.

Interrogatory No. 23:

State whether or not said corporations, namely, Producers Oil Company and The Texas Company, were or not, managed by the same officers or directors, and whether the management of each was not the same at the time of the production and sale of oil from said wells?

Answer to Interrogatory No. 23:

The two companies, Producers Oil Company and The Texas Company, were not managed by the same officers or directors, and the management of each was not the same either before or during the time of the production by Producers Oil Company and the sale of the oil from said Wells to The Texas Company, nor for that
46 matter has the management been the same since. The two companies have never been identical either in stock ownership, directors or officers, but have always had a different set of stockholders, directors and officers, and have maintained not only separate complete organizations, but separate offices, equipment and assets, and this condition existed during the existence of both corporations.

Interrogatory No. 24:

Was not the Producers Oil Company engaged in the drilling of wells and the production of oil, and was not The Texas Company engaged in the manufacture and sale of the oil produced by the Producers Oil Company at the time said wells were drilled and operated?

Answer to Interrogatory No. 24:

The Producers Oil Company was engaged in the production and sale of crude oil, and The Texas Company

was engaged in the sale of crude oil, as well as refining and the sale of refined products of crude oil. The Texas Company purchased from the Producers Oil Company large amounts of crude oil produced by the latter, as it purchased likewise large amounts of oil produced by other producers, which oil it refined and sold. This was during the time the wells involved in this litigation were drilling and operated by the Producers Oil Company.

C. N. SCOTT.

The State of Texas,
County of Harris.

I, H. Tomfohode, a Notary Public in and for the county of Harris, State of Texas, do hereby certify that the above witness, C. N. Scott, vice-president of Producers Oil Company, was by me duly sworn on oath to testify to the interrogatories propounded; that the deposition of the said witness was reduced to writing by me on a typewriter in the presence of said witness, and when completed was read over to the said witness and subscribed by him in my presence; that the said deposition was taken in pursuance of an order of the United States District Court, as set forth in the caption hereof. I further certify that I am not of counsel or interested in any manner in this case.

47

In witness whereof, I have hereunto set my hand and official seal, on this the 14th day of February, A. D. 1918, in the county of Harris, State of Texas.

H. TOMFOHODE,
Notary Public in and for
Harris County, Texas.

(Seal)

My Commission expires May 31, 1919.

United States District Court, for the Western District of Louisiana, Shreveport Division.

United States of America, Complainant,

vs. No. 1153 In Equity.

C. W. Lane, Board of Commissioners of Caddo Levee District, Producers Oil Company, The Texas Company, Defendants.

In the above entitled matter, Otto Hartung, who was up to November 13th, 1917, Chief Clerk of the Accounting Department of the Producers Oil Company and who since said date has been Chief Accountant of the Producing Department of The Texas Company, appears and answers the interrogatories propounded to The Producers Oil Company, (except 25, 26 and 27, a motion having been made to strike them out, and except 21, 22, 23 and 24 which are answered by Mr. C. N. Scott), as follows:

Interrogatory No. 1:

State whether or not the Producers Oil Company drilled on Lot 1 of Section 3, T. 20, N. R. 16 W., the well known as Lane No. 3.

Answer to Interrogatory No. 1:

From information obtained from the records of the Producers Oil Company, I find that The Producers Oil Company drilled the well known as Producers Oil Company-Lane Levee Board Well No. 3 on Lot 1 of Section 3, T. 20, N. R. 16 W.

Interrogatory No. 2:

State when the said well was commenced and
48 when it was completed.

Answer to Interrogatory No. 2:

The records of The Producers Oil Company show that the drilling of well known as Lane Levee Board No. 3 was begun July 28th, 1911 and that said well was completed August 29th, 1911 as a producing oil well.

Interrogatory No. 3:

Did said well produce oil, and was said oil or the proceeds of the sale thereof, converted to the use and benefit of the defendants in this cause?

Answer to Interrogatory No. 3:

Lane well No. 3 was a producing well. The oil produced from said well to the date of May 1st, 1916 was sold and delivered by the Producers Oil Company to The Texas Company and that from such date the interest of The Producers Oil Company in the total of said oil produced, to-wit: five-sixths of such total production, was sold and delivered by The Producers Oil Company to The Texas Company.

Interrogatory No. 4:

During what period was said well operated in the production of oil, and, when, if at all, did it cease to produce oil?

Answer to Interrogatory No. 4:

Lane Well No. 3 was operated for the production of oil from or about the date of its completion, to-wit: August 28th, 1911 up to about December 1916 when said well ceased to produce any oil and that on or about the 12th day of December 1916 casing was pulled from said well.

Interrogatory No. 5:

State how much oil was extracted and removed by The Producers Oil Company, or any other defendant, from

the land in controversy, (a) from the time said well begun producing up to July 1, 1917, and (b) from July 1, 1917, to January 1, 1918.

Answer to Interrogatory No. 5:

The records of The Producers Oil Company show that there was produced and removed by the Producers
49 Oil Company from the land embraced in the lease of the Board of Commissioners of Caddo Levee District and C. W. Lane to The Producers Oil Company from the beginning of production of said Lane Well No. 3, on or about August 29th, 1911 up to December 1st, 1916, was, 164,442.34 barrels. After which date no oil has been produced from said Well No. 3 for the reason, as heretofore stated, well ceased producing at or about said date, and, that, shortly thereafter casing was pulled from said well.

Interrogatory No. 6:

State whether or not the said well was operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

Answer to Interrogatory No. 6:

There was but one well operated in the production of oil located on the lease involved in this suit, and that was well known as Lane No. 3. There were two other wells drilled on adjacent land to the land involved in this suit, known as Lane Well No. 1 and Lane Well No. 4. Upon the completion of the Lane Well No. 3, the oil produced therefrom was run into the same tank receiving the production from the Lane Well No. 1. With the production from Lane Well No. 3 involved in this litigation and the production from Lane Well No. 1 not involved in this litigation was run together in the same tank until the com-

pletion and putting into operation of the Lane Well No. 4, which is a well not involved in this litigation, and that, therefore, the production of the Lane Well No. 3 involved in this litigation and the production from Lane Well No. 1, and Lane Well No. 4 not involved in this litigation, was run together in the same tank and that no other oil was run into said tank except the oil from the Three wells named in this answer.

Interrogatory No. 7:

Was a separate and complete record kept by The Producers Oil Company or any other defendant, of the oil produced by Lane No. 3? If so, state how said record was kept, and attach to your answer a copy of said record. If your answer is in the negative, explain why such record was not kept.

50 Answer to Interrogatory No. 7:

As heretofore answered a record of the production of oil from Lane Well No. 3 was not kept separately from the production of other Wells on said lands. But that the production of the Three Wells, Lane Well No. 3 involved in this litigation and Lane Well No. 1 and Lane Well No. 4 not involved in this litigation was kept jointly. The only reason the production from these wells was not kept separately was, that from an accounting standpoint it was only necessary to keep separate production which represented different ownership in order that The Producers Oil Company could account for the delivery to the royalty owners of their proportionate part of the oil produced. The oil produced from these three wells was run together and not kept separately, because at the time of the production of said oil from the standpoint of accounting, it was only thought necessary to be able to show the amount of oil which was due The Pro-

ducers Oil Company and the amount of oil which was due the lessors who had leased to The Producers Oil Company the lands upon which all of said wells were situated. I have no knowledge as to whether any record was kept showing the separate production of the different wells herein named by any of the other defendants.

Interrogatory No. 8:

Was a record of any kind kept by The Producers Oil Company, or any other defendant, while said well was in operation, showing the amount of oil produced therefrom, by the day, week, month, year or any period?. If not, state why no record of the production of such well was kept.

Answer to Interrogatory No. 8:

This interrogatory has been mainly answered in the answer given to interrogatory Number Seven. However, a record was kept by the day, month and year of the oil produced jointly by the three producing wells—One being Lane No. 3 involved in this suit. The reason that the record was not kept has been given in my answer to interrogatory Number Seven.

Interrogatory No. 9:

If you have said in answer to the foregoing interrogatories, that no record of any kind was kept of the production of said well, then state whether there is any
51½ way, or method, by which actual or approximate, production of said well may be ascertained. If so, state such method.

Answer to Interrogatory No. 9:

As I have heretofore answered, a record was kept of the production by leases and not as to each well separately

on any particular lease, and as to the well involved in this suit as heretofore testified to, the production of Lane Well No. 3 is an estimated production. The method of arriving at the estimation of such production would be to make an analysis of the run tickets and an estimation of the life of the wells together with an average approximation of the total decline of production and with personal inquiry of those actually operating said wells at the time said production was mingled.

Interrogatory No. 10:

State whether or not the production of the well in suit, as given in your answers to the preceding interrogatories, and in the answers of the Producers Oil Company to the bill of complaint herein, is exact, or is based upon an estimate of any kind.

Answer to Interrogatory No. 10:

The production of this well, Lane No. 3, the only well involved in this suit, is given in my answers to these interrogatories as estimated upon the method set out in my answer to interrogatory Number Nine and which method I understand is the basis of the estimate of production shown in the answer of The Producers Oil Company to the bill of complaint herein.

Interrogatory No. 11:

If said production is based upon an estimate of the quantity of oil produced by Lane No. 3 in connection with other wells not in suit, then state (a) the total production of all wells operated in conjunction with Lane No. 3, (b) where such wells are located, and (c) the names of all such wells.

Answer to Interrogatory No. 11:

The production given for Lane Well No. 3 is based upon an estimate of the quantity of oil produced by Lane No.

3 in connection with Lane No. 1 not involved in this suit and Lane No. 4 not involved in this suit, (a)
52 that the total production of all wells operated in conjunction with Lane No. 3, namely, Lane No. 1 and Lane No. 4, heretofore referred to, amounts, from the date of beginning of production from said well Lane No. 3 to-wit: on or about August 29th, 1911 to December 1st, 1916, to 164,442.34 barrels, (b) that said wells Lane No. 1 and Lane No. 4 are located upon lands immediately adjoining the lands in this litigation and which lands are a part of the leases leased by the Board of Commissioners of Caddo Levee District and C. W. Lane to The Producers Oil Company.

Interrogatory No. 12:

If the production of Lane No. 3 as given in the answer of the Producers Oil Company to the bill of complaint, and in your answers to the preceding interrogatories, is estimative and not exact, then state the manner in which you arrived at, or figured the production of such well.

Answer to Interrgoatory No. 12:

As heretofore stated as to Lane Well No. 3, the production is estimated and the manner in which the estimation is arrived at or figured is set out in my answer to interrogatory Number Nine.

Interrogatory No. 13:

What was the initial production of Lane No. 3, and the total production, by month, of said well during the period of its operation?

Answer to Interrogatory No. 13:

The records of The Producers Oil Company do not show that the initial production was estimated of this well,

but the reports of production and the estimated production allotted to well No. 3 would indicate that its initial production was fifteen or twenty barrels per day. The total estimated production by months of said well Lane No. 3 during the period of its operation is shown by months on the statement hereto attached marked Exhibit "A" and made a part of this answer.

Interrogatory No. 14:

State where and from whom the data, or information, relative to the production of said well, as given in the answer of the Producers Oil Company to the bill of complaint herein, was obtained. Give names and
53 addresses of persons from whom such data, or information, was secured.

Answer to Interrogatory No. 14:

The data or information relative to the production of Lane Well No. 3 was obtained from the oil records of the Producers Oil Company, the run tickets, together with data worked up by Mr. W. A. Hammann of the Shreveport office of The Producers Oil Company, at Shreveport, La., who obtained information as to the production of Lane Well No. 3 from the field records and from personal inquiry from those who were directly in charge of the operation of such wells.

Interrogatory No. 15:

What was the total value of the oil produced by the well known as Lane No. 3? State whether the value as given by you in your answer to this question is exact or approximate.

Answer to Interrogatory No. 15:

The total value of the oil produced from the well Lane No. 3 based upon the approximation of its production is

$12,410.72. This amount represents the value of the total approximate production of Lane Well No. 3 from the time it began producing up to May 1st, 1916 and the value of five-sixths of the approximate production of said Lane Well No. 3 from May 1st, 1916 to December 1st, 1916. The value of the total approximate production of Lane Well No. 3 from the time it began producing up to May 1st, 1916 is $11,795.70. The value of five-sixths of the estimated production of Lane Well No. 3 from May 1st, 1916 to December 1st, 1916 is $615.02. The value given is substantially exact, the only approximation being the value of oil produced as reflected by previous answers.

Interrogatory No. 16:

Was not the oil taken from said well sold by The Producers Oil Company to The Texas Company?

The oil taken from Lane Well No. 3 was sold by The Producers Oil Company to The Texas Company.

Interrogatory No. 17:

What was the total price received by the Producers Oil Company for all the oil produced by the well in controversy?

54 Answer to Interrogatory No. 17:

The total price received by The Producers Oil Company for the estimated production from Lane Well No. 3 from its beginning up to May 1st 1916, is $11,795.70 and for its five-sixths of the estimated production of the oil produced from Lane Well No. 3 from May 1st, 1916 to December 1st, 1916 was, $615.02.

Interrogatory No. 18:

What was the total price received by The Producers Oil Company for all the oil produced by Lane No. 3 and any other wells that may have been operated in connection with said well?

Answer to Interrogatory No. 18:

The total price received by the Producers Oil Company for all of the oil produced by Lane Well No. 3 and other wells, to-wit: Lane Well No. 1 and Lane Well No. 4, that were operated in connection with Lane Well No. 3 from the time of the beginning of production from Lane Well No. 3 to May 1st, 1916 is $129,073.93 and the total price received by The Producers Oil Company for its five-sixths proportion of the production from the wells named in this answer, being both the well involved in this suit and the two wells that were not involved in this suit from May 1st, 1916 to December 1st, 1916 is, $9,762.18.

Interrogatory No. 19:

Where and in what manner was the oil above mentioned delivered to the purchaser?

Answer to Interrogatory No. 19:

The oil produced as testified to in these answers was delivered by The Producers Oil Company from its measuring tanks to the purchasers and which measuring tanks are situated on the lease.

Interrogatory No. 20:

Was not said oil delivered to the purchaser on the land where it was produced by transfer from a tank, or tanks, in which the oil was stored to a pipe line, and did not said pipe line belong to The Texas Company?

Answer to Interrogatory No. 20:

The oil produced from Lane Well No. 3 involved in this suit and from Lane Well No. 1 and Lane Well
55 No. 4 not involved in this suit was delivered to the purchaser from the measuring tanks of The Producers Oil Company situated on the Lane Levee Board

lease and which measuring tanks were connected to the gathering lines of The Texas Company pipe line system?

Interrogatories 21, 22, and 24 are answered by Mr. C. N. Scott.

Interrogatories 25, 26 and 27 are not answered for the reason that motion has been made to strike them out.

Interrogatory No. 28:

How much money was paid as royalty by The Producers Oil Company of The Texas Company to C. W. Lane and the Board of Commissioners of the Caddo Levee District, defendants herein, out of the proceeds of the sale of oil taken from the land in controversy?

Answer to Interrogatory No. 28:

There was paid by The Producers Oil Company to C. W. Lane as royalty on the oil produced from the lease of the Board of Commissioners of the Caddo Levee District and C. W. Lane to The Producers Oil Company, from the date of beginning of production from the Lane Well No. 3 to May 1st, 1916 the sum of $5,385.16, and there was paid by the Producers Oil Company to the Board of Commissioners of the Caddo Levee District as royalty for oil produced from said lease referred to from the beginning of the production from Well Lane No. 3 to May 1st, 1916 the sum of $16,126.75, and on the basis of the approximation of production of the Well Lane No. 3 as herein testified to there has been paid as royalty to C. W. Lane from the Lane Well No. 3 the only well on said lease in controversy herein from the date of beginning of production from said well to May 1st, 1916 the sum of $491.35 and that on the same basis of estimation of production of said Lane Well No. 3 there has been paid to the Board

of Commissioners of the Caddo Levee District as royalty from said well Lane No. 3 from the beginning of production of oil from said well to May 1st, 1916 the sum of $1,474.05. Since said date, May 1st, 1916 the division of royalty from this well has been made by the Tex-
56 as Company and this defendant has not made any other or further payments of royalty for oil produced from said well to either of said defendants in this cause.

Interrogatory No. 29:

Did said well produce any gas either in merchantable quantities or sufficient in amount for use in the operation of said well, or other wells? In either event, state what disposition was made of such gas and what was its value.

Answer to Interrogatory No. 29:

Said Well Lane No. 3 did not produce gas either in merchantable quantities or sufficient amount for use in operation of said well or of other wells. During the month of July, 1916, Lane Well No. 3 involved in this suit and Lane Well No. 1 and Lane Well No. 4 not involved in this suit were connected up for the purpose of saving gas which was produced from said wells with the oil, and which gas is known as casing head gas and which as heretofore stated had not been utilized for any purpose whatsoever. The gas from said Three wells was run through one meter and no record has been kept of the individual production of gas from any particular well; for the reason that it was expensive to so connect such wells and that from an accounting standpoint it was unnecessary to keep a separate record of such wells, but only necessary to keep a record of the total production of gas from all of the wells on said lease. The records of The Producers Oil Co. show that the total production of this casinghead

gas from Lane Levee Board lease which includes the production of the three wells herein named, and no others, amounts, from July 1916 to December 1st, 1916 to, 8,337-060, cu. feet, which gas is of an average market value of 4c per thousand cu. foot, and utilized by The Producers Oil Co. in the manufacture of casing head gasoline.

OTTO HARTUNG.

57 State of Texas,
County of Harris.

I, H. Tomfohrde, a Notary Public in and for the County of Harris, State of Texas, do hereby certify that the above witness, Otto Hartung, who was up until November 13, 1917, Chief Clerk of the Accounting Department of the Producers Oil Company, and who since that date has been Chief Accountant of the Producing Department of The Texas Company, was by me duly sworn, on oath, to testify to the interrogatories propounded; that the deposition of said witness was reduced to writing by me on the typewriter, and when completed read over to the said witness and subscribed by him in my presence; that the said depositions were taken in pursuance of an order of the United States District Court, as set forth in the caption hereof. I further certify that I am not of counsel or interested in any manner in this case.

In witness whereof, I have hereunto set my hand and official seal, on this 14th day of February, 1918, in the County of Harris, State of Texas.

H. TOMFOHRDE,
(Seal) Notary Public in and for the County of Harris, State of Texas.

My commission expires May 31, 1919.

58 EXHIBIT "A" TO ANSWER TO INTERROGATORY NO. 13 ESTIMATED STATEMENT OF OIL RUN FROM LANE WELL NO. 3.

October, 1911	440.75
November	490.92
December	407.18
January, 1912	287.72
February	289.30
March	284.62
April	293.51
May	358.77
June	282.32
July	302.98
August	327.58
September	338.87
October	258.82
November	317.45
December	301.76
January, 1913	314.57
February	317.40
March	320.57
April	250.96
May	272.68
June	309.50
July	388.83
August	219.65
September	284.67
October	442.90
November	308.33
December	182.01
January, 1914	324.64
February	299.14
March	287.09

April	299.93
May	266.86
June	363.22
July	317.30
August	285.15
September	213.42
October	337.27
November	332.24
December	281.87
January, 1915	308.63
February	215.30
August	95.70
September	65.43
October	113.22
November	80.72
December	98.72
January, 1916	82.72
February	88.13
March	84.14
April	82.95
May	97.66
June	85.41
July	86.61
August	91.02
September	88.01
October	90.00
November	86.54
Total	14,143.66

59 Indorsed: Answer of Producers Oil Company to Interrogatories. Filed Feb. 15, 1918.

60 (ANSWERS OF PRODUCERS OIL CO. TO INTERROGATORIES).

United States District Court, for the Western District of Louisiana, Shreveport Division.

United States of America,
Complainant.
vs. No. 1153 In Equity.

C. W. Lane, Board of Commissioners of Caddo Levee District, Producers Oil Company, The Texas Company.

Now comes the Producers Oil Company, and files herewith the answers of said Company, through C. N. Scott, its Vice President, to the interrogatories Nos. 25, 26, and 27, propounded by the plaintiff in the above cause, and which interrogatories were not previously answered because of a motion having been made to strike them out. Said motion having been overruled, said defendant, Producers Oil Company, now makes answer thereto in compliance with the order of this Honorable Court.

By its Attorney,

HAMPDEN STORY.

United States District Court for the Western District of Louisiana, Shreveport Division.

United States of America,
Complainant,

vs. No. 1153 In Equity.

C. W. Lane, Board of Commissioners of Caddo Levee District, Producers Oil Company, The Texas Company.

In the above entitled cause, C. N. Scott, Vice President of Producers Oil Company, appears and answers interrogatories propounded to Producers Oil Company, and which had not been previously answered for the reason that a motion had been made to strike them out. Said motion having been overruled by the Court, answers are made as follows:

Interrogatory No. 25:

What are the principal products manufactured from petroleum, or crude oil?

Answer to Interrogatory No. 25:

Producers Oil Company was not engaged in the manufacture of products from petroleum, but only in the production and sale of crude oil. The oil produced from the wells involved in this litigation I assume, from the location of the wells in controversy, was oil of a high
61 gravity. I know from a general knowledge of the oil business that the principal products manufactured from such crude oil would be gasoline and burning oils. As to what was actually done with the oil in litigation I have no knowledge.

Interrogatory No. 26:

State the total value, either exactly, if you know, or approximately if you do not know positively, of the products manufactured by The Texas Company from the oil taken from the land in controversy.

Answer to Interrogatory No. 26:

I have no knowledge whatsoever of what products were manufactured from the oil taken from the land in controversy, nor for that matter, whether The Texas Company manufactured it at all. Therefore, I can not state the value, or approximately the value, of such products.

Interrogatory No. 27:

State to what extent, if any, the Producers Oil Company participated in the profits derived from the manufacture of the oil taken from the land in controversy, and amount so received by it from such profits.

Answer to Interrogatory No. 27:

Producers Oil Company did not participate in the profits derived from the manufacture of the oil taken from the land in controversy, and received no amounts from such products.

C. W. LANE.

State of Texas,
County of Harris.

Be it known, that I, H. Tomfohrde, a Notary Public in and for the County of Harris, State of Texas, do hereby certify that the above witness, C. N. Scott, vice president of Producers Oil Company, was by me duly sworn on oath to testify to the interrogatories propounded; that the deposition of the said witness was reduced to writing by me on a typewriter in the presence of said witness, and

when completed was read over to said witness and subscribed by him in my presence; that the said deposition was taken in pursuance of an order of the United
62 States District Court, as set forth in the caption hereof.

I further certify that I am not of counsel or interested in any manner in this case.

In witness whereof, I have hereunto set my hand and official seal, on this the 6th, day of March, A. D. 1918, in the County of Harris, State of Texas.

H. TOMFOHRDE,
Notary Public in and for Harris County, Texas.

Indorsed: No. 1153, In Equity, United States District Court for the Western District of Louisiana. United States of America vs. C. W. Lane et al. Answers of Producers Oil Co. Defendant to interrogatories propounded. Filed March 9, 1918.

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63 (ANSWER OF THE TEXAS CO. TO INTERROGATORIES).

United States District Court for the Western District of Louisiana. Shreveport Division.

United States of America,
versus No. 1153.
C. W. Lane, Board of Commissioners of Caddo Levee District, Producers Oil Company, The Texas Company.

Now comes The Texas Company, and files herein the answers of said Company, through T. J. Donoghue, its

Vice-President, to interrogatories Nos. 21, 22, 23, and 24, and through R. J Daniels, its Chief Accountant, to all other interrogatories, propounded by the plaintiff, in the above cause, excepting Interrogatories Nos, 25, 26 and 27 motion having been made to strike them out.

By its Attorney,

HAMPDEN STORY.

United States District Court for the Western District of Louisiana, Shreveport Division.

United States of America,
Complainant,
vs. No. 1153 In Equity.

C. W. Lane, Board of Commissioners of Caddo Levee District, Producers Oil Company, The Texas Company.

In the above entitled cause T. J. Donoghue, Vice-President of The Texas Company, appears and answers interrogatories propounded to The Texas Company as follows:

Interrogatory No. 21:

What relation existed between the Producers Oil Company and The Texas Company at the time said oil was sold by the Producers Oil Company to The Texas
64 Company?

Answer to Interrogatory No. 21:

The relation that existed between these two corporations was that of contract. There existed during that time a contract or contracts under which The Texas Company agreed to purchase from Producers Oil Company, and

Producers Oil Company agrees to sell and deliver, all oil produced in the field where the wells involved in this suit are located, paying therefor the market or posted price. For a time there was a limit as to the minimum amount that The Texas Company undertook to buy and pay for, but this limit was not exercised as to the particular oil in controversy, and The Texas Company under said contract bought and paid for all the oil produced from the wells involved in this litigation.

Interrogatory No. 22:

Is it not a fact that the Producers Oil Company sold all of the oil produced by it to The Texas Company during the time said wells were in operation?

Answer to Interrogatory No. 22:

The Texas Company purchased all the oil produced by Producers Oil Company from the wells involved in this suit during the time the wells were operated by Producers Oil Company. It did not however during this period buy all the oil produced by Producers Oil Company everywhere. There was oil produced by that company and sold to other parties than The Texas Company.

Interrogatory No. 23:

State whether or not said corporation, namely Producers Oil Company and The Texas Company, were, or not, managed by the same officers or directors, and whether the management of each was not the same at the time of the production and sale of oil from said wells?

Answer to Interrogatory No. 23:

The two companies, Producers Oil Company and The Texas Company, were not managed by the
65 same officers or directors, and the management of each was not the same either before or during

the time of the production by Producers Oil Company and the sale of the oil from said wells to The Texas Company nor for that matter have the management been the same since. The two companies have never been identical either in stock ownership, directors or officers, but have always had a different set of stockholders, directors and officers, and have maintained not only separate complete corporate organizations, but separate offices, equipment and assets, and this condition existed during the existence of both corporations.

Interrogatory No. 24:

Was not the Producers Oil Company engaged in the drilling of wells and the production of oil and was not The Texas Company engaged in the manufacture and sale of the oil produced by the Producers Oil Company at the time said wells were drilled and operated?

Answer to Interrogatory No. 24:

The Producers Oil Company was engaged in the production and sale of crude oil, and The Texas Company was engaged in the sale of crude oil, as well as refining and the sale of refined products of crude oil. The Texas Company purchased from Producers Oil Company large amounts of crude oil produced by the latter, as it purchased likewise large amounts of oil produced by other producers, which oil it refined and sold. This was during the time the wells involved in this litigation were drilled and operated by the Producers Oil Company.

T. J. DONOGHUE.

66 State of Texas,
County of Harris.

I, H. Tomfohrde, a Notary Public, in and for the County of Harris, State of Texas, do hereby certify that the above witness, T. J. Donoghue, vice president of The Texas Company, was by me duly sworn on oath to testify to the interrogatories propounded; that the deposition of the said witness was reduced to writing by me on a typewriter in the presence of said witness, and when completed was read over to the said witness and subscribed by him in my presence; that the said deposition was taken in pursuance of an order of the United States District Court, as set forth in the caption hereof. I further certify that I am not of counsel or interested in any manner in this case.

In witness whereof, I have hereunto set my hand and official seal, on this the 14th day of February, A. D. 1918, in the county of Harris, State of Texas.

H. TOMFOHRDE,
(Seal) Notary Public in and for Harris County, Texas.

My commission expires May 31, 1919.

United States District Court for the Western District of Louisiana, Shreveport Division.

United States of America,
Complainant,
vs. No. 1153 In Equity.

C. W. Lane, Board of Commissioners of Caddo Levee District, Producers Oil Company, The Texas Company.

In the above entitled matter R. J. Daniels, who as Chief Accountant had charge of the books of account of the pipe line department of The Texas Company, and the books of account showing oils run to the pipe line of and purchased by the Texas Company from producers of oil including oils run to the pipe lines of and purchased by the Texas Company from the wells included in this suit; that his title and position as chief accountant of the pipe line department of The Texas Company continued up to July 1, 1917, at which date the pipe lines of the Texas Company in Louisiana, including pipe lines serving the wells involved in this suit were transferred to a new corporation known as The Texas Pipe Line Company, but that the books of account showing oils run to the pipe line department of The Texas Company, and to the Texas Pipe Line Company, together with the books of account
67 showing oils purchased by The Texas Company included in both instances the wells involved in this litigation have remained in his custody and control, and are so in his custody and control up to this date, and who appearing answers the interrogatories propounded to The Texas Company (excepting Nos. 25, 26 and 27, a motion having been made to strike them out, and excepting interrogatories Nos. 21, 22, 23 and 24, which are answered by Mr. T. J. Donoghue) as follows:

Interrogatory No. 1:

State whether or not the Producers Oil Company drilled on Lot 1 of Section 3, T. 20, N. R. 16 W., the well known as Lane No. 3.

Answer to Interrogatory No. 1:

The records of The Texas Company do not disclose whether or not the Producers Oil Company drilled the well mentioned, but on information I am informed that it did.

Interrogatory No. 2:

State when the said well was commenced and when it was completed.

Answer to Interrogatory No. 2:

The records of The Texas Company do not reflect when said well was begun, or when it was completed.

Interrogatory No. 3:

Did said well produce oil, and was said oil or the proceeds of the sale thereof, converted to the use and benefit of the defendants in this cause?

Answer to Interrogatory No. 3:

The records in my custody do not show the production of oil from any particular well, but the records show that oil was run from the lease known as the lease of the Board of Commissioners of Caddo Levee District and C. W. Lane to the Producers Oil Company, and this oil was sold to The Texas Company by the Producers Oil Company, The Texas Company paying for the same.

Interrogatory No. 4:

During what period was said well operated in the production of oil, and, when, if at all, did it cease to produce oil?

Answer to Interrogatory No. 4:

The records in my custody do not reflect when the particular well in question was operated in the production of oil, nor when it ceased to produce, but only re-
68 flect the runs of oil from the lease upon which this well was located.

Interrogatory No. 5:

State how much oil was extracted and removed by the Producers Oil Company, or any other defendant, from the land in controversy, (a) from the time said well began producing up to July 1, 1917, and (b) from July 1, 1917, to January 1, 1918.

Answer to Interrogatory No. 5:

Assuming that the first oil produced from the well known as Lane Levee Board No. 3 was run to the pipe line of The Texas Company from and after the first of October, 1911, and further assuming that said well ceased to produce in the month of November 1916, the records in my custody reflect that there was run from October 1, 1911 to December 1, 1916 inclusive, from all of the wells on the lease above mentioned, 162,174.15 barrels of oil; that from October 1, 1911 to April 30, 1916 there was run to the Texas Company, and purchased by it and paid for, 152,317.73 barrels of oil, and that from May 1, 1916, to December 1, 1916 there was run to the pipe lines of The Texas Company from Lane Levee Board lease, 9,856.42 barrels of oil, of which quantity of oil 5/6 was purchased from the Producers Oil Company and paid for by The Texas Company, and that the remaining 1/6, from May 1, 1916 to September 1, 1916, 1/8 of said total quantity of oil run from the Lane Levee Board No. 3 to The Texas Company was purchased of the Board of Commissioners of Caddo Levee District and paid for by The Texas Com-

pany; and that from Sept. 1, 1916 to December 1, 1916, 1/8 of the oil run to the pipe line of The Texas Company from said lease had been held to the credit of the Board of Commissioners of the Caddo Levee District; that from May 1, 1916 to October 1, 1916 1/24 of the total amount of oil run to The Texas Company's lines from said lease was purchased of C. W. Lane by the Texas Company and paid for by it; that from October 1st, 1916 to December 1, 1916 1/24 of the total of oil run to the pipe line of The Texas Company has been held to the credit of C. W. Lane. The quantity of oil run to the pipe line of The Texas Company from said lease herein referred to, and the amount of oil purchased by said The Texas Company and paid for it from the Producers Oil Company, Board of Commissioners of Caddo Levee District and C. W. Lane, and the quantity of oil held to the credit of said Board of Commissioners of Caddo Levee District and C. W. Lane is correctly reflected in the statement of said account attached, and marked Exhibit "A", to the
69 answer of The Texas Company to the bill of complaint herein.

Interrogatory No. 6:

State whether or not the said well was operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

Answer to Interrogatory No. 6:

The records in my custody reflect that the oil produced from the well in question, Lane Levee Board No. 3, was received into the pipe line of The Texas Company, and was purchased by The Texas Company and paid for by it in connection or intermingled with the oil produced from all of the wells on said lease, and there are no records in my custody that reflect the production of said well sepa-

rately from the production of all of the other wells on said lease.

Interrogatory No. 7:

Was a separate and complete record kept by the Producers Oil Company, or any other defendant, of the oil produced by Lane No. 3? If so, state how said record was kept, and attach to your answers a copy of said record. If your answer is in the negative, explain why such record was not kept.

Answer to Interrogatory No. 7:

The records in my custody do not reflect that any separate or complete record, or any record at all, was kept of the separate production from the well known as Lane Levee Board No. 3, and I have no knowledge as to whether any such record was kept by any of the other defendants.

Interrogatory No. 8:

Was a record of any kind kept by the Producers Oil Company, or any other defendant, while said well was in operation, showing the amount of oil produced therefrom, by the day, week, month, year, or any period? If not, state why no record of the production of such well was kept.

Answer to Interrogatory No. 8:

The records in my custody do not reflect that any record was kept while said well, Lane Levee Board No. 3, was in operation showing the amount of oil produced therefrom, by the day, week, month, or year, but the records in my custody reflect that a record was kept of the oil run from this Lane Levee Board lease to the pipe line of The Texas Company from all of the wells on said lease, including the well in controversy herein by the day, month and year; that it was

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not necessary or required that The Texas Company should keep any record of the separate production of any well from which oil was run to its pipe lines, or purchased by it.

Interrogatory No. 9:

If you have said in answer to the foregoing interrogatories that no record of any kind was kept of the production of said well, then state whether there is any way, or method, by which the actual, or approximate, production of said well be ascertained. If so, state such method.

Answer to Interrogatory No. 9:

From the standpoint of pipe line accounting it is not necessary to keep any record of a separate production of any particular well, and I do not know by what method the actual or approximate production of any particular well might be ascertained.

Interrogatory No. 10:

State whether or not production of the well in suit, as given in your answers to the preceding interrogatories, and in the answer of the Producers Oil Company to the bill of complaint herein, is exact or is based upon an estimate of any kind.

Answer to Interrogatory No. 10:

The records in my custody, as heretofore testified to, do not reflect the production of the well in question, nor of any particular well, and I have no knowledge as to the method by which the production from this well has been figured.

Interrogatory No. 11:

If said production is based upon an estimate of the quantity of oil produced by Lane No. 3 in connection with other

wells not in suit, then state (a) the total production of all wells operated in conjunction with Lane No. 3, (b) where such wells are located, and (c) the names of all such wells.

Answer to Interrogatory No. 11:

That the quantities of oil given in these answers represent oil run to the pipe line of The Texas Company from the Lane Levee Board lease, and that the records in my custody do not reflect, nor have I any knowledge of, the total production of all wells operated in conjunction with the well in controversy herein, nor where such wells are located or their names, except as possibly the names of the wells as certain specific runs may be reflected by the run tickets.

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Interrogatory No. 12:

If the production of Lane No. 3 as given in the answer of the Producers Oil Company to the bill of complaint, and in your answers to the preceding interrogatories, is estimative and not exact, then state the manner in which you arrived at, or figured, the production of such well.

Answer to Interrogatory No. 12:

The answers given to the preceding interrogatories by me do not state any separate production for the well known as Lane Levee Board No. 3, and I have no knowledge as to whether any statement of the separate production of said well is estimated, nor the manner in which same was obtained.

Interrogatory No. 13:

What was the initial production of Lane No. 3, and the total production, by months, of said well during the period of its operations?

Answer to Interrogatory No. 13:

The records in my custody do not reflect the initial production of Lane Levee Board No. 3, nor, as heretofore testified to, do such records reflect the separate production of said well by months.

Interrogatory No. 14:

State where and from whom the data, or information, relative to the production of said well, as given in the answer of the producers Oil Company to the bill of complaint herein, was obtained. Give names and addresses of persons from whom such data, or information, was secured.

Answer to Interrogatory No. 14:

I am not informed as to where or from whom data, or information relative to the production of said Lane Levee Board No. 3 was obtained.

Interrogatory No. 15:

What was the total value of the oil produced by the well known as Lane No. 3? State whether the value as given by you in your answer to this question is exact or approximate.

Answer to Interrogatory No. 15:

As heretofore testified to, the records in my custody do not reflect the total value of the separate production from the well know as Lane Levee Board No. 3.

Interrogatory No. 16:

Was not the oil taken from said well sold by the Producers Oil Company to The Texas Company?

72 Answer to Interrogatory No. 16:

The records in my custody reflect that oil was run from the lease of the Board of Commissioners of the

Caddo Levee Board and C. W. Lane to the Producers Oil Company, on which lease is situated the well known as Lane Levee Board No. 3, to the pipe line of The Texas Company, and that such oil was sold by the Producers Oil Company to The Texas Company.

Interrogatory No. 17:

What was the total price received by the Producers Oil Company from all the oil produced by the well in controversy?

Answer to Interrogatory No. 17:

The records in my custody do not reflect that The Texas Company bought of the Producers Oil Company any oil separately produced from the well known as Lane Levee Board No. 3.

Interrogatory No. 18:

What was the total price received by the Producers Oil Company for all the oil produced by Lane No. 3, and any other wells that may have been operated in connection with said well?

Answer to Interrogatory No. 18:

The records in my custody reflect that the total price paid by The Texas Company to the Producers Oil Company for all of the oil run to the pipe line of The Texas Company from the Lane Levee Board lease from October 1, 1911 to April 30, 1916 was $127,939.80, and that the total price paid by The Texas Company to the Producers Oil Company for oil run to the pipe line of The Texas Company from this Lane Levee Board lease from May 1, 1916 to November 30, 1916 amounted to $9,670.71, which amount represented the value of 5/6 of the total amount

of oil run to the pipe line of The Texas Company from said lease during said last named period, making a total of $137,610.51 paid by The Texas Company to the Producers Oil Company for oil run to the Texas Company's pipe line by the Producers Oil Company from Lane Levee Board lease, and purchased by The Texas Company from Producers Oil Company.

Interrogatory No. 19:

Where and in what manner was the oil above mentioned delivered to the purchaser?

73 Answer to Interrogatory No. 19:

The records in my custody reflect that the oil received into the pipe line of The Texas Company from the Lane Levee Board lease was delivered to said pipe line from the measuring tanks of the Producers Oil Company, located upon said lease.

Interrogatory No. 20:

Was not said oil delivered to the purchaser on the land where it was produced by transfer from a tank, or tanks, in which the oil was stored to a pipe line, and did not said pipe line belong to The Texas Company?

Answer to Interrogatory No. 20:

The records in my custody reflect that the oil delivered to The Texas Company from the Lane Levee Board lease, as stated in my answer to interrogatory No. 19, was delivered to the pipe line of The Texas Company from measuring tanks of the Producers Oil Company situated upon the lease in question.

(Interrogatories Nos. 21, 22, 23, and 24 are answered by Mr. T. J. Donoghue. Interrogatories Nos. 25, 26, and

27 are not answered for the reason that a motion has been made to strike them out).

Interrogatory No. 28:

How much money was paid as royalty by the Producers Oil Company or The Texas Company to C. W. Lane and the Board of Commissioners of the Caddo Levee District defendants herein, out of the proceeds of the sale of oil taken from the land in controversy?

Answer to Interrogatory No. 28:

The records in my custody do not reflect what amount of money was paid as royalty by the Producers Oil Company to C. W. Lane and the Board of Commissioners of Caddo Levee District, but the records in my custody reflect that there was paid by The Texas Company to the Caddo Levee Board for oils purchased by The Texas Company from the Board of Commissioners of Caddo Levee District, the sum of $1,062.94, which amount represents the purchase price of 1/8 of the total quantity of oil run to the pipe line of The Texas Company from the Lane Levee Board lease from the first of May 1916 to the thirty-first of August 1916 and that there is now a credit balance in oil upon the books of The Texas Company to the credit of the Board of Commissioners of Caddo Levee District of 488.10 barrels representing 1/8 of the total quantity of oil run to the pipe line of The Texas Company from the Lane Levee Board lease from Sept. 1, to Nov. 30, 1916, and which oil at the date of its run is of the market value of $439.28. That there was paid by The Texas Company to C. W. Lane the sum of $401.48, representing the purchase price of 1/24 part of the oil run to the pipe line of The Texas Company from the Lane Levee Board lease from May 1, 1916, to September 30, 1916, and that there is on the books of

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The Texas Company a credit balance in oil to the credit of C. W. Lane 110.30 barrels of oil, which oil at the date of its run is of the market value of $99.27 and which represents 1/24 part of the oil run in pipe line of The Texas Company from the Lane Levee Board lease from October 1, 1916, to November 30, 1916.

Interrogatory No. 29:

Did said well produce any gas either in merchantable quantities or sufficient in amount for use in the operation of said well, or other wells? In either event, state what disposition was made of such gas and what was its value?

Answer to Interrogatory No. 29:

The records in my custody do not reflect, nor have I any knowledge as to whether or not the wells or any of the wells situated on the Lane Levee Board lease produced any gas whatsoever.

R. J. DANEIL.

The State of Texas,
County of Harris.

I, H. Tomforhde, a Notary Public, in and for the county of Harris, State of Texas, do hereby certify that the above witness, R. J. Daniel was by me duly sworn on oath to testify to the interrogatories propounded; that the deposition of the said witness was reduced to writing by me on a typewriter in the presence of said witness, and when completed was read over to the said witness and subscribed by him in my presence; that the said depositions were taken in pursuance of an order of the United States Dis-

trict Court, as set forth in the caption hereof. I further certify that I am not of counsel or interested in any manner in this case.

In witness whereof I have hereunto set my hand and official seal, on this the 14th day of February, A. D. 1918, in the county of Harris, State of Texas.

H. TOMFORHDE,

(Seal) Notary Public in and for Harris County, Texas.

My commission expires May 31, 1919.

Indorsed:—Answer of The Texas Co. to Inters No. 21, 22, 23 and 24. Filed Feb. 15, 1918.

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75 (ORDER APPOINTING E. H. RANDOLPH MASTER).

United States District Court, Western District of Louisiana.

United States,

vs. No. 1153.

C. W. Lane, et al.

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court and economize in time, and for the purpose of expediting the final hearing of said cause, the Court of its own motion appoints Edward H. Randolph, Esq., Special Master herein.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court or elsewhere as may be advisable.

RUFUS E. FOSTER, Judge.

March 29, 1918.

Filed Mar. 19, 1918.

76 (NOTE OF EVIDENCE).

United States District Court, Western District of Louisiana, at Shreveport, La.

United States,
vs. No. 1153
Charles W. Lane, et al.

United States District Court, Western District of La., at Shreveport, La.

United States,
vs. No. 1158
Gulf Refining Co. of La., et al.

United States District Court, Western District of La., at Shreveport, La.

United States,
vs. No. 1162
Southwestern Gas & Elec. Co., et al.

United States District Court, Western District of La., at Shreveport, La.

United States,
vs. No. 1163
J. M. Walling, et al.

United States District Court, Western District of La., at Shreveport, La.

United States,
vs. No. 1164
Mrs. Jessie N. LaRobadiere.

Evidence taken before the Honorable E. H. Randolph, Special Master in the above causes, commencing on May

8th, 1918, in the United States Court room, at Shreveport, Louisiana.

R. B. Cook was appointed Stenographer to report the evidence and qualified by taking the proper oath.

Appearances:

Hon. R. A. Hunter, appeared on behalf of the Government.

Messrs. Foster, Looney & Wilkinson, appeared for C. W. Lane.

Thigpen & Herold, appeared for Gulf Refining Company.

Hampton Storey, appeared for Texas Company.

W. C. Barnett, appeared for Board of Commissioners of the Caddo Levee District.

77 The above numbered and entitled causes, being consolidated for the purpose of trial and in case of appeal are to go up in one transcript.

In these cases, Counsel for Plaintiff and defendants, in order to save the presentation of witnesses and encumbering the record have agreed upon the following statement, subject to the objections noted, following the agreement.

For the purpose of expediting the trial of these cases and simplifying the issues herein, it is agreed by and between counsel for the respective parties as follows, to-wit:

1: That the surveys made herein by Arthur D. Kidder, Supervisor of Surveys and his associates and assistants, were made under instructions issued by the Commissioner of the General Land Office, as shown by letters of date September 27, 1913, and of December 1, 1916, from Clay Tallman, Commissioner of the General Land Office, to the said Arthur D. Kidder, Supervisor of Surveys,

which will be offered in evidence herein by plaintiff, and that said surveys were made conformably to said instructions; that the surveys referred to herein are represented by certain official plats approved July 24, 1916, and March 28, 1917, which will be offered in evidence by plaintiff; that the plate made by the said Arthur D. Kidder, or under his supervision, hereinabove referred to, correctly depict the surveys as made by him, and that all the figures, measurements, courses, distances, elevations and topographic features shown on said plats are correct. It is also admitted that the said Arthur D. Kidder, Supervisor of Surveys, correctly reestablished and reproduced the survey made by A. W. Warren, Deputy Surveyor, of Township 20, north of Range 16 west, in strict accordance with the said original Warren survey, the said original survey being represented upon the official plat approved August 31, 1839.

2. That the contour line of 173.09 feet above mean Gulf level established by the said Arthur D. Kidder, Supervisor of Surveys, as the mean high water elevation of Ferry Lake in 1812 when the State of Louisiana was admitted into the Union, and in 1839 when A. W. Warren made his survey of Township 20, North of Range 16 West, was in reality the mean high water elevation of Ferry Lake and James Bayou, at such dates, and that the meander line of Ferry Lake and James Bayou as run by said Kidder follows said contour of 173.09 feet.

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3: That all of the tracts in controversy in these suits lie above the mean high water elevation of Ferry Lake as it existed in 1812 and 1839.

4: That the various tracts of land lying between the meander line of Ferry Lake and James Bayou as run by

the said Arthur D. Kidder, and the line represented as a meander line upon the plat of said original Warren survey hereinabove referred to, including the tracts in controversy in these consolidated causes, were in 1812 and in 1839, at all times since said dates, and now are, lands in place and of the same character, geological formation, and quality as the lands surveyed by said Warren as aforesaid; that said tracts of land are now and were in 1812 and 1839 and at all times since said dates, what is known in this locality as hill land covered with native forest trees and vegetation characteristic of hill land, and that all of said lands were at the dates mentioned and at all times subsequent thereto, uplands in character and existed as such at the time of the said Warren survey and in 1812.

5: That the various tracts of land embraced in the extension survey of said Arthur D. Kidder, Supervisor of Surveys, and represented upon the plats aforesaid, including the property in controversy in these consolidated causes, were not formed by accretion, or by the recession or reliction, of the waters of Ferry Lake or James Bayou since 1812.

6: That Ferry Lake is and was in 1812 and 1839 a navigable body of water.

7: This stipulation shall not be construed as an admission upon the part of defendants that the lands in controversy were not included within the survey made by A. W. Warren, as a matter of law; the defend-
79 ants contending that under the Warren survey their titles extended to mean high water elevation.

8: Plaintiff and defendants shall have the right to offer evidence in these causes, and these admissions shall not be construed as preventing them, or any of them from introducing additional evidence.

The defendant, Producers Oil Company and the other defendants object to the admissibility in evidence of the surveys of 1913 and 1914 and the extension survey of March 28, 1917, by A. D. Kidder, United States Surveyor and Supervisor of Surveys, and of the field notes and plat thereof made under authority of the Department of the Interior of the United States or of the Commissioner of the General Land Office, on the grounds as follows, to-wit:

1: Because of their incompetency, irrelevancy and immateriality.

2: On the further ground that said surveys, so made, were beyond the authority, control and jurisdiction of said Secretary of the Interior and of the Commissioner of the General Land Office, in this: That the land described as Lot No. 1 of Section 3, Township 20 north Range 16 west, in the bill of complaint, was not included and embraced in the Executive Orders of Withdrawal dated December 15, 1908, and July 2, 1910, respectively.

3: On the ground that the said surveys purport to be corrective surveys of Section 3, Township 20 North, Range 16 West, embracing lands as alleged and described in the bill of complaint as Lot 1 of Section 3, Township 20 North, Range 16 west, the title to which was not, at the time of and prior to said surveys, in the United States, but was, and now is, in private ownership, having passed by the United States to the State of Louisiana under the

Swamp and Overflowed Land Acts of Congress of March 2, 1849, and September 28, 1850, particularly referred to in Article 9 of defendant's answer.

4: On the further ground that, if said lands were not so passed or conveyed by the United States to the State of Louisiana under said Acts aforesaid, then the same passed to the Heirs of John Russell under pat-
80 ent issued by the plaintiff, the United States, of date September 26, 1906, according to the official survey, field notes and plat of A. W. Warren, United States Deputy Surveyor, of 1839, and approved by the Commissioner of the General Land Office, August 31, 1839.

5: On the further ground, that the said surveys of A. D. Kidder are inadmissible to show the title to any land lying between the fractional quarter section 3 and the waters of Jeems Bayou, or Ferry Lake, remaining or now vesting in the United States.

6: On the further ground, that the said surveys of A. D. Kidder are incompetent to contradict, reconstruct, explain or impeach the verity of the A. W. Warren official survey, field notes and plat.

7: On the further ground, that the said surveys of A. D. Kidder are incompetent to show error, omission or fraud in the survey of A. W. Warren, United States Deputy Surveyor, made in 1839, and of the B. B. Bristol survey of 1871, if any, for the reason that said errors, omissions or fraud cannot affect bona fide and innocent purchaser who have acquired the lands described in the bill of complaint on the faith of the correctness of said official survey of A. W. Warren, on which patent was is-

sued to the Heirs of John Russell; and, further, that no proof of omission, error or fraud is admissible as such is not alleged in the pleadings or bill of complaint.

Counsel on behalf of C. W. Lane, objects on the ground and for the further reason that there is no allegation in the bill of complaint that C. W. Lane claims ownership of this land or any real right in the land, or any allegation that the Producers Oil Company drew the oil from the land as the representative of Lane or delivered any oil to Lane from this land.

And further object to any evidence or any admissions that may enlarge the pleadings already filed in the case.

Objection overruled, same going to its effect.

To which ruling Counsel for Defendants except and reserve a bill of exceptions, and asks that the ob-
81 jection, ruling and exception be made general to apply to all testimony of a similar character and it is so ordered.

Counsel for Plaintiff offers in Evidence the following documents:

1. Certified copy of withdrawal order of date December 15th, 1908.

Filed in Evidence and marked Plaintiff "A."

2. Also copy of order of withdrawal of petroleum reserve No. 4, approved July 2nd, 1910.

Filed in Evidence and marked exhibit "B."

Counsel for defendants objects to these offerings as irrelevant, as the defendants are not claiming under any mineral location.

Admitted subject to the objection.

To which ruling of the Master, counsel for defendants except and reserve a bill of exceptions.

3. Counsel for Plaintiff offers in Evidence all documentary evidence offered by the Plaintiff in the case of the United States vs. Sam W. Mason, et al., No. 1172 on the docket of this Honorable Court, all of which offerings were made in connection with the issue raised in said case relating to the withdrawal orders.

4. Copy of letter dated September 27th, 1913, from the Commissioner of the Genral Land Office, to Mr. Arthur D. Kidder, Supervisor of Surveys, being one of the letters referred to in the admission heretofore made.

Filed in Evidence and marked exhibit "C."

5. Certified copy of letter of date December 1st, 1916, from the Commissioner of the General Land Office, approved by the First Assistant of the Secretary of the Interior, addressed to Mr. Arthur D. Kidder, Supervisor of surveys, being one of the letters referred to in the admission heretofore made.

Filed in Evidence and marked Plaintiff "D."

82 6. Plat of survey of A. W. Warren, Deputy Surveyor, approved August 31st, 1839, which said plat was offered in evidence in the case of the United

States vs. Jeems Bayou Fishing and Hunting Club No. 1157, Plaintiff reserving the right to substitute a copy thereof for use in this record.

7. A certified copy of the field notes of the survey of A. W. Warren, Deputy Surveyor above referred to, which said field notes were offered in Evidence in the case of the United States vs. Jeems Bayou Fishing and Hunting Club No. 1157, Plaintiff reserving the right to substitute for use in this case a certified copy of said field notes.

8. Supplemental Plat approved March 28th, 1917, by the Commissioner of the General Land Office, and by the Surveyor General of Louisiana at New Orleans of Township Twenty North of Range sixteen west.

Filed in evidence and marked exhibit "E."

9. Book "A" of field notes of the reestablishment of the South, East, and Northern boundary of Township Twenty North of Range Sixteen West, Louisiana meridian approved July 24th, 1916, offered in evidence in the case of the United States vs. Jeems Bayou Fishing and Hunting Club No. 1157, marked Plaintiff 14 therein, Plaintiff reserving the right in this case to substitute a certified copy thereof for use in this record.

10. Certified copy of the field notes of the reestablishment of the boundary line between the State of Louisiant and Texas, approved July 26th, 1916, offered in Evidence in the case of the United States vs. Jeems Bayou Fishing and Hunting Club, No. 1157, marked Plaintiff 15 therein, Plaintiff reserving the right to substitute a certified copy thereof for use in this record.

11. Certified copy of the field notes of the reestablishment of the subdivisional and meander lines of Township Twenty, North of Range Sixteen West, approved July 24th, 1916, offered in evidence in the case
83 of the United States vs. Jeems Bayou Fishing and Hunting Club No. 1157, Plaintiff reserving the right to substitute a certified copy for use in this record.

12. Certified copy of the field notes of the Extension survey made by and under the direction of Mr. Arthur D. Kidder, Supervisor of surveys, approved March 28th, 1917, offered in evidence in the case of the United States vs. Jeems Bayou Fishing and Hunting Club No. 1157, marked Plaintiff No. 17 in said case. Plaintiff reserving the right to substitute a certified copy for use in this record.

13. Hydrographic and Topographic map of portion of Township Twenty North of Range Sixteen West, Louisiana Meridian, approved October 14th, 1915, offered in Evidence in the case of the United States vs. Jeems Bayou Fishing and Hunting Club and Numbered 13 therein. Plaintiff reserving the right to substitute a certified copy thereof for use in this record.

14. Resurvey plat of Township Twenty North, Range Sixteen West Louisiana meridian, approved July 24th, 1916, by the Commissioner of the General Land Office, offered in Evidence in the case of the United States vs. Jeems Bayou Fishing and Hunting Club No. 1157, being marked plaintiff No. 8 therein. Plaintiff reserving the right to substitute a certified copy of said plat for use in this record.

15. Supplemental Topographic plat of Township Twenty north, of Range Sixteen west, Louisiana meridian, approved March 28th, 1917, by the Commissioner of the General Land office, offered in evidence in the case of the United States vs. Jeems Bayou Fishing and Hunting Club No. 1157 and marked Plaintiff No. 10 therein. Plaintiff reserving the right to substitute a certified copy thereof, for use in this record.

16. In each of the consolidated cases now on trial, Plaintiff offers copies of the Supplemental Plat of Township Twenty North of Range Sixteen West, Louisiana meridian, and copies of the Supplemental Topo-
84 graphic Plat of Township Twenty North of Range Sixteen West Louisiana meridian, said offering being marked Plaintiff "F."

17. Certified copy of Louisiana tract book, certified by D. K. Parrot, Acting Assistant Commissioner of the General Land office under date of January 16th, 1918, insofar as it relates to Section Thirteen, Township Twenty, North of Range Sixteen West, Louisiana meridian. Said offering being made with special reference to the case of the United States vs. Southwestern Gas and Electric Company No. 1162.

Filed in Evidence and marked exhibit "G."

18. Certified copy of the Louisiana Tract Book, so far as it shows Section Ten, Township Twenty, North, Range Sixteen West, Louisiana meridian. Offered with special reference to the case of the United States vs. J. M. Walling, et al., No. 1163.

Filed in Evidence and marked exhibit "H."

19. Certified copy of the Louisiana tract book, so far as it relates to Section Three, Township Twenty North, Range Sixteen West, Louisiana meridian. Offered with special reference to the case of the United States vs. C. W. Lane, et al., No. 1153.

Filed in Evidence and marked Plaintiff "I."

20. Certified copy of the Louisiana tract book, so far as it shows Section Twenty-Four, Township Twenty North, Range Sixteen West Louisiana meridian. Offered with special reference to the case of the United States vs. Gulf Refining Company of Louisiana, et al., No. 1158.

Filed in Evidence and marked Plaintiff "J."

21. Certified copy of the Louisiana tract book, so far as it shows Section Twenty-Five, and Section Thirty-six, Township Twenty North, Range sixteen west, Louisiana meridian. Offered wtih special reference to the case of the United States vs. Mrs. Jessie N. Larobadiere No. 1,-164.

Filed in Evidence and marked Plaintiff "K."

85 22. Extract copy of Louisiana Tract book, so far as it relates to Township Twenty North of Range Sixteen West, Louisiana meridian. Offered in all of the consolidated cases and marked Exhibit No. 28 in the case of the United States vs. Jeems Bayou Fishing and Hunting Club No. 1157. Plaintiff reserving the right to substitute a certified copy for use in this case.

It is agreed by and between Counsel of the respective parties herein, that the documents and maps offered, by

reference to the case of the United States vs. Jeems Bayou Fishing and Hunting Club, that copies may be subsequently placed in this record in lieu of the originals thereof.

PROF. FRANK LEVERETT, a witness for the Plaintiff, being first duly sworn, testified as follows:

On Direct examination he said:

By Mr. Hunter:

Q. Professor Leverett, are you a Geologist?

A. Yes, sir.

Q. Have you had any experience in work as a Geologist?

A. I began work as a Geologist for the Government of the United States, in the United States Geological Survey in 1886 and have been in continuous employment since then.

Q. Are you now connected with any University, in the capacity as Geologist, if so what University?

A. I am connected with a Lectureship in the University of Michigan, on Geology.

Q. Are you now connected with the Geologic survey, as a Geologist?

A. I am holding the position of Geologist.

Q. In the United States Geological Survey?

A. Yes, sir.

Q. State whether or not, you have made an examination of the land involved in these consolidated cases, consisting of Lot one of Section Three; Lot one of section Twenty-four; lot one of section thirteen; lot seven of section ten; lot one of section Twenty-five and lots one and two of section Thirty-six?

A. Yes, sir, I have been on all of those lots.

Q. When were you on that area?

86 A. I was on every one of those lots in January, 1918, and each time examination the elevations of the particular wells, with the topography and character of the land.

Q. Did you make a geological examination of this land at that time?

A. I did.

Q. State the character of this land?

A. I find in all cases that the land is land that is well drained, stands above the mean high water level of Ferry Lake, in the raft period and the soil of the primary residuary formation from the underlying formation, the breaking down of the underlying formation the residuam remaining in fact clay.

Q. What did the formation of the soil, indicate to you in regard to the land?

A. It indicated that it was soil that was formed and in place by the breaking down of the formation.

Q. State whether or not all of this land, is well drained?

A. They are all sloping quite rapidly in nearly every case. I carried a hand level and I was able to determine the character of the slope, and in all cases it was a pretty rapid slope.

Q. Are there any basins, ponds or mashes on any of this area?

A. No, sir.

Q. No place where water could stand for any length of time?

A. No, sir, thoroughly drained area. Each area is thoroughly drained.

Q. When you went upon this land, were you accompanied by a surveyor, if so, who?

A. I was accompanied by Mr. Lester L. Clement, who visited all of these tracts with me.

Q. He identified the land and pointed out each lot to you?

A. He did.

Q. State whether or not Mr. Clement pointed out to you the Warren meander line, or so called meander line through the land?

A. Yes, sir, in each case, we looked the land over to the post established by Mr. Kidder, along the Warren meander line, and I then made notes as to the character of the land inside of the meander line, as compared to that left out.

Q. What did you find in that respect?

A. I found no difference in the character of
87 the land on either side of the line.

Q. The land on both sides was the same in topography and character?

A. It was.

Q. I will ask you to state whether or not there is anything in the character of the land, as it existed in 1812 and 1839, in your opinion as a Geologist that would have justified the running of the Warren line, so called meander line in the position in which it was run, at the place where it was run?

Objected to by Counsel for Defendants on the ground and for the reason that the witness is not an engineer, and does not claim to be an expert in that line.

Question withdrawn.

Q. You have already stated that you have examined the Warren so called meander line through these sections involved in this suit, I will ask you to state whether or not there is any Geological evidence or topographic evidence of any kind in existence along that line in 1812 or

1839, or any time subsequent to this date of a lake, stream or water course, on that line whatever?

A. No, sir. I find no topographic features indicating any such condition, or no geographic features, no lake deposit or other features indicate a shore line.

Q. State whether or not you find on any of the tracts involved in these consolidated case any pond, basin, marsh or swamp, or anything else that would require artificial draining?

A. No, sir, I did not. The slopes were all clear down to the 173.09 and were adequate to carry off the water?

Q. The land slopes towards the 173.09 foot contour?

A. Yes, sir.

Q. All the area involved in this suit, lie above that contour?

A. Yes, sir, they do.

Q. Now, referring particularly to the suit of the United States vs. C. W. Lane, et al., No. 1153, involving lot One of section Three, and suit of United States vs. Jessie Larobadiere, No. 1164, involving Lot one of section thirty-five and lots one and two of section Thirty six; and Lot one of Section Twenty four, involved in the suit of the United States vs Gulf Refining Company of Louisiana. I will ask you to state whether or not there is any evidence of swampy conditions on those tracts, or marsh conditions, basins, ponds or anything else requiring artificial draining?

88

A. No, sir.

Q. I direct your attention to the two cases now on trial, being the case of the United States vs Southwestern Gas and Electrical Company, involving Lot one of Section Thirteen and United States vs J. W. Walling No. 1163 involving Lot Seven of Section Ten, and I will ask you to state whether or not you found in any of those tracts

any evidence of a basin, pond, marsh or any other condition requiring artificial draining?

A. No, sir, I did not.

Q. I will ask you to state whether or not you found any geological formations whatever along the Warren so called meander line, through the sections involved in any of these suits, showing in any way that in 1839 that line was run out or run along the margin of any lake or along the shore of any lake, stream or water course of any kind?

A. No, sir, found no geological evidence to that effect.

Q. In the questions that I have asked you, I have referred particularly to the meander line through the parcels of land involved in these suits. I will ask you to refer to that meander line through the parcels involved in these suits and state whether or not you found any such geological formations showing that it in 1839, when the survey was made, that that particular line was run along any lake border, stream or other water course?

A. No, sir, it was not.

No Cross Examination.

HENRY C. COWLES, a witness for the Plaintiff, being first duly sworn testified as follows:—

On Direct Examination he said:—

By Mr. Hunter:—

Q. Dr. Cowles, you are an Ecologist?

Q. State whether or not you are connected
89 with the University of Chicago?

A. I am Professor of Ecology.

Q. How long have you been an Ecologist?

A. Twenty two years.

Q. State whether or not you studied Ecology in any College or School?

A. Yes, sir, I did.

Q. What College?

A. The College of Ohio. I took a course in Botany and Geology and then in the University of Chicago took up Ecology specifically in 1895 and 1896 and received the degree.

Q. Have you had considerable experience in Ecological work?

A. Yes, sir.

Q. What is Ecology?

A. Ecology is that science which endeavors to determine the kind of place in which trees and other plants grow, and why they grow there.

Q. Is it or not a study of trees in relation to their environments?

A. Yes, sir.

Q. I will ask you to state whether or not a tree, a growing tree on a tract of land is or is not a witness to the conditions under which it germinated and grew?

A. It is a witness and a very exact witness of its germination and growth.

Q. Can it be determined by the principles of Ecology as to the age of trees?

A. Yes, sir.

Q. How is that done?

A. It is done by the age count, the growth of the rings, the so called annual rings of the trees.

Q. Can you determine by Ecology the conditions under which the tree grew, with respect to the soil and water?

A. Yes, sir.

Q. State whether or not the conclusions of Ecology in regard to the facts inquired about, is any way specific or exact?

A. They are exact.

Q. I will ask you to state, whether you ever made an investigation for Ecological purposes of Ferry Lake and the border of Ferry Lake?

A. Yes, sir, I have.

Q. When was that investigation made?

A. My first investigation was made in February 1914.

Q. At that time did you make an examination of the land on the border of Ferry Lake?

A. Yes, sir.

Q. Did you at any time subsequent thereto make any investigation of the various tracts of land involved in these consolidated suits?

A. Yes, sir, in December 1917, I spent several days on Ferry Lake in the neighborhood, and also one day in April 1918.

Q. Have you examined the specific tracts in controversy, consisting of Lot one of section three, lot seven of section Ten, Lot one of Section Thirteen; Lot one of section twenty four, lot one of Section Twenty five and lots one and two of section thirty six?

A. Yes, sir, I have examined all of those.

Q. When was your examination made?

A. I visited a number of those areas in February 1914, but not knowing at time of these suits I did not examine those lots specifically, but I examined those lots specifically in my investigation in December 1917.

Q. State whether or not you were accompanied to the tracts in suit by any Surveyor?

A. Yes, sir, by Mr. Arthur D. Kidder, Supervisor of Surveys.

Q. Did he identify the tracts and point out to you the lines?

A. He did.

Q. I will ask you to refer to the land involved in these suits, in Section Three, being Lot one of Section Three and I will ask you to state whether or not you were shown the so called Warren meander line through the parcel of land involved in this suit, being lot one of section Three?

A. Yes, sir, I was.

Q. What have you to say in regard to the type of trees and the number of trees, growing on the land in suit?

A. The trees growing on the lot in suit, were trees of an up land character, trees that grow on well drained up land, containing oak, pine, some gum and some hickory.

91 Counsel for Plaintiff offers in Evidence certified extract from the records of the Register of the State Land Office, signed by Fred J. Grace, Register, offered in evidence in the case of the United States vs Jeems Bayou Fishing and Hunting Club, and marked Plaintiff No. 21, in suit No. 1157, and Counsel for defendants agree that the Plaintiff shall substitute in lieu of the original offered in said case, a copy thereof, for use in the record of this case.

Counsel for Plaintiff also offers in Evidence extract from the records of the United States Land Office, at Baton Rouge, La., offered in evidence in the case of the United States vs Jeems Bayou Fishing and Hunting Club, No. 1157, marked Plaintiff Exhibit—in said cause, it being agreed by and between Counsel for Plaintiff and defendant that Plaintiff may substitute a copy thereof, for use in the record in this case.

Counsel for plaintiff also offers in evidence a certified copy of the records of the United States Surveyor General's Office of the State of Louisiana, certified by Fred J. Grave, Register of the State Land Office, marked Plain-

tiff 22 in the case of the United States vs Jeems Bayou Fishing and Hunting Club, No. 1157, it being agreed that Plaintiff may substitute a copy thereof for use in the record in these cases.

Q. Prof. Cowles, I will ask you to state whether or not, there are any swamp, basins, ponds or marshes on any of the area involved in these consolidated suits?

A. There are none.

Q. What have you to say in regard to the drainage of all of the land involved in these consolidated suits?

A. The drainage is good in every one.

Q. What directions do the land slope, with reference to the contour of mean water elevation?

A. They slope in every case towards Ferry Lake.

Q. Is the slope sufficient so as to produce good drainage, without any artificial drainage?

92 A. Yes, sir.

Q. I will ask you to state whether or not, any of the timber growth on this area involved in these suits now on trial, is characteristic swamp land?

A. No, sir, there is none characteristic of swamp. Of course there is some swamp timber below the 173.09 foot contour.

Q. The swamp timber is all below the mean high water elevation?

A. Yes, sir.

Q. What have you to say in regard to whether or not the timber growth on the land is the same now as it was in 1812, and since that date, in general character?

A. I am satisfied it is of the character it was in 1812 and 1839 and before 1812, for that matter.

Q. Do you make that statement on any age count of trees?

A. Yes, sir, any number of trees.

Q. Without going into the details, I will ask you to state whether or not, the age counts made of trees on the various tracts involved in this suit, showed a number of trees antedated in age 1812?

A. Yes sir, they did.

Q. And the trees are trees that are characteristic of up land?

A. Yes, sir, the most of them being post oak and pine and they are decidedly up land trees.

Q. I direct your attention to that portion of the so called Warren meander line in Sections involved in these suits, which according to the supplemental plat of Township Twenty North of Range Sixteen West, approved March 28th, 1917, marked Plaintiff's Exhibit "G", delineating the boundary between the tracts in suit and the land surveyed by A. W. Warren, and I will ask you to state what are the characteristics of the timber growth along that line, in respect to the land omitted and the land included in the Warren survey?

A. The timber on the Warren line is up land timber, except where the Warren line goes down to the 173.09 foot contour, in that case it is the same on both sides of the line, that is on the surveyed land and the land omitted.

Q. Referring only to that portion of the line which delineates the boundary, according to the supplemental plat, between the land involved in these suits and
93 the land surveyed by Warren, I will ask you to state whether or not the timber growth is the same on both sides of the line?

A. It is.

Q. State whether or not there is anything in the timber growth or topography of the ground, or in any other respect to show that when the line was run, it was run along the margin, bank or shore or contour of Ferry Lake, or bayou or stream of water?

A. No, sir, there is nothing in the topography or timber growth to show that it was the boundary of any stream or water course.

Q. State whether or not the conditions which prevail on the ground at the time you made your Ecological examination was substantially the same conditions that prevailed in 1839 and in 1812?

A. Yes, sir, they were substantially the same.

Q. Upon what is your statement based?

A. Upon the age of the trees in places, many of which antedated the earlier dates, and on the fact of the character of the growth, which showed they were preceded by a similar growth of vegetation.

Q. The present forest, in so far as it exists today shows that it was preceded by an earlier forest of the same character?

A. Yes, sir, of the same character.

Q. I will ask you to state whether or not there is in the area in controversy in these suits, whether in 1812 or any time subsequent thereto, was a part of the bed of Ferry Lake?

A. They were not.

Q. Or any other stream, lake or water course?

A. They were not.

LIONEL L. JANES, a witness for the Plaintiff, being first duly sworn testified as follows:—

On Direct Examination he said:—

By Mr. Hunter:—

Q. Mr. Janes, are you an Ecologist?

A. Yes, sir.

Q. What experience have you had in Ecology?

A. Well, I have had considerable experience in the National Forestry in Arizona, New Mexico, Arkansas and other United States Forestry service of the United
94 States. I have had a good deal of experience in Louisiana, Florida, Arkansas with the Interior Department and Department of Justice, from 1907 to the present time.

Q. Did you hear the testimony of Dr. Henry C. Cowles, who has just been upon the stand in regard to the definition of Ecology, and certain deductions?

A. Yes, sir.

Q. Will you or not corroborate what he said on this subject?

A. Yes, sir I will.

Q. I will ask you to state whether or not you have ever made an examination of the land bordering on Ferry Lake? Particularly with reference to the land in controversy in these suits?

A. Yes, sir, I have.

Q. When did you make your first examination?

A. Late in the year 1913 and in the early months of 1914.

Q. What was the purpose of your examination in 1913 and 1914?

A. The purpose of the investigation was to determine the history of Ferry Lake and the adjacent up lands, and when the lake came into existence and to determine the mean high water mark of the Lake in 1812 and 1839 and subsequent to that date, and also to ascertain the history of the unsurveyed up lands.

Q. At the time of your examination in 1913-1914, were you in the employee of the Government in any capacity?

A. Yes, sir, I was Ecologist with the Interior Department, assigned to the General Land Office, especially for this work.

Q. At the present time are you in the employee of the Government?

A. No, sir.

Q. Are you familiar with the land involved in these suits, being Lot one of section Three; Lot seven of section Ten; Lot one of section Thirteen, Lot one of section Twenty four; Lot one of section Twenty five, and lots one and two of section Thirty six, Township Twenty North of Range sixteen west?

A. I am.

Q. I will ask you to state whether or not you became familiar with those lands in your examination of the border of Ferry Lake in 1913-1914 in a general way?

A. Yes, sir, I did.

Q. State whether or not you made a subse-
95 quent ecologic examination of the area above referred to?

A. Yes, sir, I made such examination in 1914 and again in December 1917.

Q. Were the lines of the various tracts of land above mentioned pointed out to you and the tracts identified by any Surveyor in 1914 and again in 1917 when you made your examination?

A. Yes, sir, they were pointed out to me by Mr. Arthur D. Kidder, Supervisor of Surveys of the General Land Office.

Q. Are you satisfied that your ecologic examination was made upon the identical area involved in these suits?

A. Yes, sir.

Q. In view of the admissions I am not going into the other details of your testimony but I will ask you to state in a general way whether the timber growth on the lands involved in these suits and the age of the trees approximate in a general way—I mean with particular reference to whether or not there are any trees growing on

the tracts or any trees which have been cut which you could make age counts of which antedated 1812?

A. The forested area and the trees on all of the tracts below the 180 foot contour and between that and the 173.09 contour consist of over-cup oak, red gum, willow oak, water oak and some ash and some other species and in many cases these trees are large in size and apparently old, above the 180 foot contour on these tracts where they have not been cleared for one purpose or another the forest is of post oak, upland hickory, black-jack, pine and other species and many of these trees, especially the large post oak are apparently of a great age, ranging in years from one hundred and fifty to two hundred and fifty years in age, the age of the forest above the 180 foot contour on these tracts is very similar and is not distinct from the upland forests of the adjacent surveyed land, which also have large trees of great age, black-jack, post oak and upland pine.

Q. Mr. Janes, what is the significance of the over-cup oak, willow oak and red gum below the 180 foot contour?

96 A. They are large trees and grow on lands which was occasionally over-flowed around Ferry Lake and it is well drained, the land has a good slope, the land is fairly dry, practically dry for the most of the year and furnishes an excellent site for the growth of forest trees or any other vegetation.

Q. What do you say in regard to the character and slope of the ground as to whether artificial drainage is required in any of these various tracts in order to use them for agricultural purposes?

A. No, sir, no artificial drainage is required in any part of any of the area because these tracts are naturally well drained, high and dry.

Q. Are they up-land in character?

A. Yes, sir.

Q. State whether or not there are any marshes, swamps or ponds on any of this area that requires draining?

A. No, sir, there is no pond or swamp and there is no swamp vegetation on any of this land.

Q. Of what is the vegetation and tree growth on the land characteristic?

A. Well of any general upland area.

Q. I will ask you to state whether or not there was pointed out to you by Mr. Arthur D. Kidder, Supervisor of Surveys, that portion of the so-called Warren meander lines in the section involved in these suits which according to the supplemental plat of Township Twenty North Range Sixteen West which is marked Plaintiff Exhibit G. designating the boundary between the lands in suit and the lands included by Warren's survey?

A. Yes, sir, he did.

Q. Are you familiar with that line?

A. Yes, sir.

Q. I will ask you to state whether there is anything in the character of the timber growth or topography of the ground showing the line above mentioned followed or was run along the bank or border of a lake or stream or other water course?

A. There is nothing in the forest on the line or adjacent to the line or anywhere near the line to
97 suggest in any way whatever that the Warren line meandered the border of any lake, swamp or other body of water.

On Cross Examination he said:—

By Mr. Story:—

Q. Mr. Janes, this survey of sample Plat was made by you?

A. Yes, sir.

Q. And the growth indicated is according to the elevation?

A. The elevation of all forest trees are shown on Plat One and are shown on this plat.

Q. Now is that a fair sample of the sort of growth that there is in all of these lands?

A. Well yes, sir, it is typical of the shore conditions and the adjacent uplands along the shore and for some distance out into the water.

Q. Now how far down does that chart go?

A. That goes down to the 166 foot contour.

Q. You didn't make any examination below that?

A. Well I think that some of the plats made extend lower, I don't just remember the lowest contour around on the plats.

Q. Now is there a growth below the 173.09 contour and what is that growth and to what elevation does it extend?

A. There is a belt of cypress timber below the 173.09 contour and it extends down to about 166.½ all the way around the lake and in some cases this belting of cypress is well defined at the present time while in other positions it has been removed, owing to the fact that those trees growing there have become exposed and been taken away by erosion, which is very active in places up against the roots or bottom of the cypress, which of course takes the soil away from them and in time the trees fall over and have been washed up, but there is a belt of timber growing up to the 173.09 foot contour which extends down to about 166 foot contour, which in many cases consists of large trees and in many instances many centuries old, these cypress trees are usually large, having large bases and a short top and are usually decrepit and very often hollow, and all together exhibiting the unfavor-
98 able conditions under which those cypress have grown.

Q. Now what character of soil do they usually grow in?

A. Cypress trees usually grow on land which is usually inundated for a considerable portion of the year, perhaps since the raft was removed some fifty years ago, the mean high water mark of Ferry Lake has receded to a considerable degree, so that below the 173.09 foot contour we find some hardwood species that have come in since then, such as willow oak, over-cup oak, some red gum, but they are not more than twenty-five or thirty years of age.

Q. But the older trees that have been in existence for years were all of the character that you have mentioned?

A. Yes, sir cypress trees.

On Re-Direct Examination he said:—

By Mr. Hunter:—

Q. Referring now to the cypress trees growing below the 173.09 foot contour, I will ask you to state whether or not they apparently represent the mean high water elevation of Ferry Lake?

A. The 173.09 foot contour represents the mean high water elevation of Ferry Lake in 1812 and 1839 up to the time the raft was removed from Red River.

Q. Now the lands involved in these suits are all above that contour?

A. Yes, sir, I understand so.

Q. You found on all of the land involved in these suits timber which is characteristic of upland?

A. Yes, sir

Q. I will ask you to state whether or not the timber growing on the lands involved in these suits is in any sense characteristic of swamp land?

A. No, sir they are not.

MR. LESTER L. CLEMENT, a witness for the Plaintiff being first duly sworn testifies as follows:—

On Direct Examination he said:—

By Mr. Hunter:—

Q. Mr. Clement you are in the employ of the United States Government?

99 A. Yes, sir.

Q. In what capacity?

A. As a surveyor.

Q. State whether or not you made an examination of the land involved in these cases, viz: Lot one of Section Three; Lot Seven of Section Ten; Lot One of Section Thirteen; Lot One of Section Twenty-four, Lot One of Section Twenty-five and Lots one and two of Section Three, Township Twenty North Range Sixteen West, La. Mer?

A. Yes sir, I examined the land in all of the suits mentioned.

Q. In what capacity did you make that examination?

A. As a surveyor employed by the General Land Office.

Q. State whether or not you had anything to do with the execution of the extension survey made under the supervision of Mr. Arthur D. Kidder, Supervisor of Surveys, approved March 28th, 1917, and represented on the supplemental plat and that survey which has been offered in evidence.

A. Yes, sir, I was associated with Mr. Arthur D. Kidder, Supervisor of Surveys in the execution of the extension survey mentioned.

Q. You assisted in running out the lines and executing the survey?

A. I did.

Q. Are you familiar with the various tracts of land involved in these suits above referred to?

A. Yes, sir.

Q. Have you been over those particular lands frequently?

A. Yes sir, several times over each tract.

Q. When was the extension survey represented by the plat mentioned made?

A. In December 1916 and January 1917.

Q. I will ask you to state in a general way Mr. Clement the character of the land involved in these suits?

A. The general character of the land involved in these suits is very similar in that they are gently rolling lands well drained, covered with a growth of native high land timber, all of the same character that we find in land included in the Warren surveys with apparently the same soil as those of the lands in the Warren survey, the land in all of the suits is gently sloping towards Ferry
100 Lake.

Q. I will ask you to state whether or not the slope of the land is sufficient throughout the area referred to have complete drainage without any artificial drainage?

A. Yes sir, there is sufficient slope for drainage without artificial drainage at any time.

Q. Are the lands upland in character?

A. Yes, sir.

Q. State whether there are any basins, ponds or marshes on the land?

A. There are no basins, ponds or marshes on any of the land in these suits mentioned all the land is practically upland in character and high and well drained.

Q. Are there any swamps or swampy conditions or swamp vegetation on any of the area involved in these suits?

A. No, sir.

Q. Mr. Clement I will ask you to state of any photographs were taken of the area involved under your direction and supervision?

A. There were several photographs taken by Mr. Dambly, a local photographer under my direction and supervision.

Q. State whether or not you took Mr. Dambly on the land in question and identified the land?

A. Yes, sir, I did and located the point at which the camera was stationed and also the direction in which the camera was facing. Pictures Nos. 1-2-3-10 & 30 were taken on the land involved in these consolidated cases.

Q. Mr. Clement I show you photograph marked No. 30 and I will ask you to state on what land that photograph was taken and what it represents?

A. Photograph marked No. 30 was taken on Lot One of Section Three.

Q. Is that the land that is involved in suit of the United States vs. Chas. W. Lane et al, No. 1153?

A. Yes sir, and the camera in view No. 30 is located at angle point No. 19 of Section Three on the 173.09 foot contour facing South 47 degrees east showing Lane No. 3 Oil Well—Producers Oil Company, the picture shows also the large size timber between the 173.09 foot
101 contour and the oil Well, one large tree which is shown in the foreground of the picture was twenty-four inches in diameter and it is noted on the back of the photograph.

Q. I will ask you to state whether or not there is on the back of the photographs a memorandum showing the position of the camera and other data represented by the photograph?

A. There is such a memorandum on the back of the photographs.

Q. Did you make the memorandum?

A. Yes, sir.

Q. Is it correct?

A. Yes, sir.

Q. I will ask you to examine photograph No. 10 and will ask you to state whether or not this photograph was taken on Lot Seven of Section Ten, being the Lot involved in suit of United States vs. J. W. Walling, et al?

A. Yes, sir, it was.

Q. Is there a memorandum on the back of that photograph?

A. There is a memorandum on the back of the photograph which I made showing the location of the camera and the particular features to be noticed in the photograph.

Q. Is that memorandum correct?

A. Yes, sir.

Q. I will show you photograph No. 3 and will ask you whether or not that photograph was taken on Lot One of Section Twenty-four being the land involved in suit of the United States vs. the Gulf Refining Company of Louisiana?

A. Yes, sir, this picture No. 3 was taken on Lot One of Section Twenty-four and there is a notation that I have placed on the back of the photograph showing the location of the camera and the particular features to be brought out in the picture.

Q. Is that memorandum correct?

A. Yes, sir.

Q. I will ask you now to examine photograph No. 1 and state whether or not it was taken on Lot One of Section Thirteen being the land involved in suit of the United States vs. the Southwestern Gas & Electric Company and I will also show you picture No. 2 taken in the same case?

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A. Photographs Nos. 1 and 2 were taken by Mr. Dambly, a local photographer under my direction they show the land and the topography features in Lot One Section Thirteen on which the Gilbert No. 1 Oil Well is located. I have prepared a memorandum on the back of each of the photographs showing the location of the camera and the particular features to be brought out in each picture.

Q. I will ask you to state whether or not the photographs and the memorandum on the back thereof which I have shown you are correct?

A. Yes, sir, they are correct.

In connection with the testimony of this witness counsel for Plaintiff offers in evidence photographs Nos. 1-2-3-10 & 30 identified by the witness. These photographs were offered in evidence in the case of United States vs. the Jeems Bayou Fishing and Hunting Club No. 1157 and counsel for plaintiff reserves the right and it is agreed that copies of said photographs may be made by plaintiff and placed in this record in lieu of the originals offered in the case mentioned.

Plaintiff likewise offers the memorandum on the back of said photographs and a similar agreement is made with regard to making copies thereof for use in this case.

Q. Mr. Clement I refer you to supplemental plat of Township Twenty North Range Sixteen West, Louisiana Mer., offered in evidence in this case and marked Plaintiff Exhibit "J" I direct your attention to the so-called Warren meander line, which according to this plat, delineates the boundary between the lots involved in these suits and the land included in the A. W. Warren survey and I will ask you to state whether or not you are familiar with that line?

A. I am familiar with the Warren so-called meander line in section Three.

Q. Are you likewise familiar with the line above mentioned in Section Ten—are you familiar with this line throughout the township?

A. Yes, sir, in the vicinity of the land included in the extension survey of 1916-1917.

Q. Are you familiar with that line in connec-
103 tion with all the lands involved in these suits?

A. Yes, sir.

Q. I will ask you to state what are the conditions relative to timber growth and topography of the ground along that line and I particularly refer to the line in this connection and mean that portion of the Warren meander line which delineates the boundary according to this plat between the land omitted and the land included in his survey and the land involved in these suits, and I will ask you to state what are the conditions as to timber growth and topography on that land?

A. The timber growth along the Warren so-called meander line and bordering the land included in the extension survey is all of an upland character, the topographical features likewise denote that the land is not subject to overflow except possibly during extreme high flood stages where it might reach the high level; the timber growth on the land included in the Warren survey and that included in the extension survey is of the same character and apparently of the same age, there is no dis-similarity in any of the topographical features on both sides of the so-called Warren meander line bordering the area in suit.

Q. I will ask you whether, as a matter of fact, the so-called meander line above referred to represents as it does upon the ground, marks the margin or shore of any lake, stream or other body of water course?

A. The Warren meander line bordering the area included in the extension survey does not represent the border of any water area, lake or other water course, it does not follow the contour and cannot be construed as being a true meander of any body of water.

Q. Does it parallel the border of Ferry Lake or any other body of water or water course?

A. No sir, it does not in its entirety.

Q. State whether or not it follows the contour of Ferry Lake, Jeems Bayou or any other water course?

A. It does not follow any contour whatever.

Q. Does it run with or without reference to
104 the contour?

A. Without reference to the contour.

Q. Now as a surveyor I will ask you to state whether or not the Warren meander line to which I have directed your attention, it it was intended to represent the meander line and was intended to be run as a meander line, is correct or incorrect?

A. It is incorrect if it was intended to represent the meander line.

Q. Well why is it incorrect?

A. Because it does not follow the border or approximately border the contour of a lake or the sinuosities of a stream or of any body of water or water course.

Q. Does the line follow the configuration of the shores of Ferry Lake or James Bayou or any other water course?

A. No, sir.

Q. I will ask you to state whether as a fact the incorrectness of the Warren so-called meander line, about which you have testified is or is not a matter of fact apparent?

A. It is apparent.

Q. Mr. Clement I will ask you to state whether or not you made on the supplemental plat, which has been offered

in evidence and marked Plaintiff "J" an illustrative profile if so, what does it represent?

A. Yes, sir, I prepared that on the various tracts representing the elevation of the surfact of the ground on the tracts and land in the vicinity of those tracts.

Q. Now are those illustrative profiles and supplemental plats offered in evidence in this case?

A. Yes, sir.

Q. Well what do the illustrative profiles show?

A. They represent the difference in elevation in the surface of the land and a comparison of those differences are practically brought out and it gives a good illustration of the comparative illustration of the land in suit as compared with the elevation of the lands that were included in the Warren survey, some of the illustrative profiles are prepared to particularly illustrate the great difference in elevation along the Warren so-called meander line showing clearly that it does not follow the contour or even approximate the contour.

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Q. Will you point out some of those features in each one of these cases?

A. On the supplemental topographic plat of Township Twenty North Range 16 West, marked Plaintiff "F" in suit No. 1153, United States vs. Charles W. Lane, et al., the illustrative profile shows the elevation of the surface of the ground starting at point A on the southern boundary of Lot Two, Section Three, which is 173.09 foot contour, thence running northerly course across Lots Two and One of Section Three to point C on the so-called Warren meander line, thence north across the land included in the Warren survey to point B on the Warren so-called meander line in the Fractional Northwest Quarter of Section Three at point A the elevation of the ground surface is 173.09 foot contour; going northerly the line rises abruptly to an elevation of practically 181, then

it descends gradually as we go in a northerly direction the Lane No. 3 Oil Well is located on the 180 foot contour; point C on the Warren so-called meander line is located at an elevation of 178½ foot contour, thence going across the land included in the Warren survey there is a descent to the elevation of 174½, then a slight rise in elevation to 177 and a sharp descent to an elevation of 166, at point B on the Warren so-called meander line. Referring to the supplemental plat of Township Twenty North Range Sixteen marked Plaintiff "F" in the case of the United States vs. Mrs. Jessie Larobardere, et al., the illustrative profile shows the ground elevation from the Warren meander corner on the eastern boundary of Fractional Section Thirty-six along the Warren so-called meander line to angle point No. 13 of Section 36. Those profiles show a great variation in the elevation of the ground surface along the meander line, instead of following approximately along the contour as a true meander line of a body of water should be located beginning at the meander corner of the eastern boundary of Fractional Section 36, which is slightly below the 173.09 foot contour and following along the Warren so-called meander line we intersect angle point No. 1 slightly below the 173.09 foot contour to the northwest of angle point One there is a creek the bottom of which is about 169 foot elevation this creek has very abrupt banks and is quite narrow, angle point No. 2 in the Warren meander line is actually on the 173.09 foot contour, at this point the so-called meander line leaves the shore of Ferry Lake and ascends abruptly a high hill to angle point No. 3 of Section 36, which it at an elevation of 185 above mean Gulf level. At a point a short distance west of angle point No. 3 the meander line reaches an elevation of 191 feet then it abruptly descends to an elevation of 184 feet

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and likewise abruptly ascends to an elevation of about 201 feet and then descends to an elevation of 196 feet approximately at angle point 4, angle points 5 and 6 are located at an elevation of about 201 feet, at this point there is a very sharp hill the meander line follows over the top of this hill and descends abruptly to angle point No. 13 which is located exactly on the 173.09 foot contour, the mean high water elevation of Ferry Lake in 1812 and 1839.

Q. Mr. Clement for the information of the Court I will ask you to state how the profile is made with relation to the plat or plats?

A. The profile of all of the plats in evidence are made with relation to the plat of survey by the notations with the green lines which I have drawn on the plat of the survey showing the location of the profiles the red line noted in the illustrative profile denote the elevation of 173.09 above mean high water elevation.

Q. Now referring to the illustrative profile I will ask you to indicate by say the letter "A" the point where the so-called Warren meander line departs from the mean high water elevation?

A. I have marked the letter "A" at angle point No. 2 Section 36 where the Warren so-called meander line departs from the shores of Ferry Lake.

Q. Will you mark the letter B at the point where the so-called meander line returns to the mean high water elevation of Ferry Lake?

A. Angle point No. 13 of Section Thirty-six which I have marked with the letter B is where the Warren so-called meander line returns to the 173.09 foot contour.

Q. I will ask you to state whether or not the
107 illustrative profiles show any portion of the Warren meander line which is correct and agrees with the mean high water elevation?

A. Yes, sir.

Q. Now please indicate on the profile with the letter A-D.

A. I have marked the meander corner on the eastern boundary of fraction Section 36 with the letter "C" that is the Warren meander line from C to A correctly follows the 173.09 foot contour, which is the shore of Ferry Lake in high water elevation in 1839 at the time of the Warren survey.

Q. Now if Warren had followed that elevation in Sections Twenty-five and Thirty-six, I will ask you to state whether or not he would have included in his surveys the land in controversy in these suits?

A. If Warren had followed the elevation that he introduced at angle point 2 on his meander line he would have included all of the land involved in these suits.

Q. Now, referring to the elevation mentioned in your answer, I will ask you to state whether those elevations are shown on the line A to C?

A. Yes, sir, from A to C or rather from C to A Warren correctly meandered the Lake.

Q. Now had he followed the same elevation in running his line as he followed from point C to A he would have included in his survey all of the land involved in these suits?

A. Yes, sir, every acre.

Q. Now at the point marked A the Warren line departs from the mean high water elevation and runs across the hill?

A. It ascends very rapidly, a very perceptible hill.

Q. And runs away from the Lake?

A. Yes, sir, quite at an angle from the shore of the Lake.

Q. What is the maximum elevation above mean high water reached on that land?

A. Approximately 201 between 200 and 202.

Q. At the point shown on the illustrative profile as being the point that he commences to return to the Lake, where is that?

A. Warren commenced his return to the Lake
108 on his so-called meander line at angle point 6 of Section Thirty-six.

Q. Will you indicate that by letter and state what it is written on?

A. I indicate it by angle point 6 of Section Thirty-six by placing the letter D on both the plat of survey and the illustrative profile.

Q. Referring please to the plat known as the supplemental plat of Section Twenty, north Range Sixteen west, marked Plaintiff exhibit F, and mark the illustrative profile thereon.

Counsel now states that he has heretofore through error referred to this plat as plat G when it is in reality Plaintiff Exhibit F.

Q. Now refer to the Warren meander line in Section Ten, which according to the suplemental plat marks the boundary between the lands surveyed by Warren and the lands embraced in these suits, what have you to say in regard to the character of that land?

A. You refer to Lot 7 of Section Ten in the case of United States vs. J. M. Walling, et al.

Q. Yes?

A. The Warren so-called meander line forming the northern boundary of Lot Seven Section Ten crosses over upland at a considerable distance from the mean high water—from the position of the mean high water of Ferry Lake going through upland timber and does not represent the true meander of the Lake nor of any body of

water or water course and does not parallel the shore of Ferry Lake.

Q. Please also refer to Warren's meander line so-called meander line in Section Thirteen, which marks the boundary between the land surveyed by him and the land included in these suits and state the character in a general way of that land?

A. The Warren so-called meander line forming the northern and eastern boundaries of Lot No. 1 of Section Thirteen according to the extension survey goes over a high hill at a considerable distance from the true shores of Ferry Lake reaching a maximum elevation of about twelve or thirteen feet above the 173.09 foot contour, the line crosses over land being high land in char-
109 acter which has previously been covered with a heavy forest of upland timber, at the present time a good portion of this land is in cultivation and the timber has been removed.

Q. I refer to the illustrative profile of supplemental plat marked Exhibit F, and I will ask you to state whether or not the profile shows the elevation of the land inquired about, Lot One of Section Thirteen?

A. Yes, sir, the profile on the plat mentioned relates to Lot One of Section Thirteen and represents a cross section of the land showing the relative elevations of the surface from point A to point B. Point A is at angle point No. 6 of Section Thirteen on the Warren so-called meander line while Point B is at angle point No. 19 on the 173.09 foot contour as established in the execution of the extension survey point A on the Warren so-called meander line is at an elevation of 187½ feet and following along the line from point A to point B the land gradually rises in elevation and reaches its maximum height at a point a little over a quarter of a mile northwest from the point A said maximum height being 196 feet, from this point

the land slopes gradually toward Ferry Lake reaching an elevation of 173.09 at the point marked B which is at angle point No. 19 in the extension survey.

Q. Now referring to the distance Mr. Clement, is that a quarter or eighth of a mile?

A. It is a little over an eighth of a mile owing to an error in the scale the distance from point A to the highest point the land between point A and point B. I wish to state that the distance from point A to the point of high land is little more than an eighth of a mile instead of a quarter of a mile.

Q. What is the distance in feet?

A. By scaling the distance from point A to the point of the high land between points A and B the approximate distance is found to be 759 feet.

Q. I will ask you to indicate on the plate with the letter C the point of high land that you have referred to between points A and B?

110 A. I have indicated by the letter C on the plat of the extension survey and on the illustrative profile the location of the high point of land included in the extension survey.

Q. How high is that above the mean high water elevation of Ferry Lake?

A. The highest point of land included in the extension survey is twenty-three feet above the mean high water elevation of Ferry Lake.

Q. What have you to say in regard to whether the land involved in these suits is higher in elevation than the land which was included in the Warren survey?

A. The highest point of land included in the extension survey is higher than the highest point of land along the Warren so-called meander line, the land ascends gradually as you go northwest from the Warren meander line.

Q. Ascends towards the land involved in these suits?

A. Yes, sir, the highest land being the land involved in these suits.

Q. Referring to the illustrative profile I will ask you to state whether or not the Warren line goes down to the 173.09 foot contour as shown by that profile?

A. No, sir.

Q. Referring now to Lot One of Section Twenty-four I will ask you to state the character of the Warren meander line in that Lot?

A. The Warren meander line forming the northwesterly boundary of Lot One, Section Twenty-four according to the extension survey ascends over land reaching a maximum elevation of about twelve feet above the mean high water elevation of Ferry Lake, in traversing this land the line leaves the border of the Lake and ascends over high land through high land timber, a portion of the land at the present time and for some years past has been in cultivation, at angle point 7 of Section 24, the Warren so-called meander line, the said meander line is close to the 173.09 foot contour practically coincides with it from this point running in a southwesterly direction to angle point No. 6 there is an ascent of about ten feet, from angle point 6 to angle point 5, there is an ascent of about two feet, then descending down to almost an intersection of the 173.09 foot contour this line fails to
111 follow the contour or shore of Ferry Lake, it does not represent a meander line of the Lake or follow the sinuosities of any stream or water course.

Q. I will ask you to state whether or not if Warren had run his meander line throughout this area at the elevation of 173.09 he would or not included in his survey all the land involved in these consolidated suits?

A. Yes, sir, he would have included all the land included in all the suits.

On cross examination he said:

By Mr. Herold:

Q. How long have you practiced your profession of engineering?

A. Twelve years.

Q. How long have you been in the Government service?

A. Ten years.

Q. Have you ever had occasion to examine any surveys of Lakes or other bodies of water other than Ferry Lake?

A. I would say that I have examined almost a hundred.

Q. Can you name some of them?

A. Well a great many lake areas involved in the so-called sunken lakes of Arkansas I investigated the areas omitted from the original surveys in Michigan, Illinois, Wisconsin and Nebraska.

Q. Have you ever followed the meander lines of Rivers and Bayous?

A. Yes, sir.

Q. What generally speaking is the purpose or object of the meander lines?

A. A meander line is a line to show the border of a body of water or the sinuosities of a stream.

Q. Did you go over the Warren meander line in its entirety?

A. In and around Ferry Lake I was not a party to the execution of the resurvey so that I had no occasion to follow the Warren meander line except where it bordered on the area included in the extension survey in this area when I followed the Warren meander lines.

Q. You followed the Warren meander lines only in this particular area involved in these suits?

112 A. In all of the land included in the extension survey.

Q. But you did not follow the Warren meander line or retrace any of these where Mr. Kidder left them undisturbed?

A. Not in the extension survey.

Q. Have you not familiarized yourself with the Warren meander line to state that you know in general features that that meander line was correctly run?

A. Well referring to the resurveyed plat of Township Twenty Range Sixteen marked Plaintiff H which was introduced in the Jeems Bayou Fishing & Hunting Club suit the dotted line on said plat represents.

Q. I am asking you a general question Mr. Clement?

A. Well I would have to refer to this plat to answer a general question I have not followed all the meander line through the other sections not involved in the extension survey.

Q. Mr. Kidder has?

A. Yes, sir.

Q. He retraced them?

A. Yes, sir.

Q. Mr. Clement, have you studied the Warren survey and field notes?

A. I have observed them.

Q. You know that Warren run his survey in 1839?

A. Yes, sir, the record shows that.

Q. Now do you not know from your investigation and general knowledge that at the time Mr. Warren made his survey that he made the survey in a country that was many hundred miles from a railroad and the communication was by steamboat?

A. I don't believe that it was several hundred miles from steamboat communication, I believe that steam-

boats were the way they travelled and they came up Red River and the various bayous.

Q. Now the steamboats did not go up the River until afterwards?

A. Well I don't know.

By Mr. Story:

Q. Now this Warren survey of the meander line shows that he run his survey on 173.09 and in some places below?

A. Yes, sir, the resurvey plat indicates that.

Q. Now can you compute the number of acres
113 that was run around that Township below the 173.09 foot contour?

A. That can be computed.

Q. You can compute that for us?

A. Well, yes, sir, and I can state it comparatively.

Q. But can you calculate it?

A. Yes, sir.

By Mr. Herold:

Q. Is it not a fact that Mr. Warren made the survey in an unsettled country?

A. I cannot state as to that I have not any knowledge of the settlement of that country at that time.

Q. Now, don't Warren's field notes show that there was only one settlement in that Townhsip?

A. I have not examined the field notes of the original survey enough to tell, I examined the field notes only in the Sections which we were extending the survey in and his meander lines along those sections.

Q. You have not then given particular study to the Warren survey except as restricted to the particular portions?

A. Yes, sir, I was interested in the extension survey not the resurvey.

Q. You were not interested in the geological features of the Warren survey?

A. No, sir.

Q. Have you ever seen a meander line made at or about the time of the Warren survey that was run on an exact contour line?

A. I can answer that question pretty by an experience that I had during the past summer. I had instructions to survey twenty-five islands on a Township in a northern peninsula of Michigan. The original survey of this township was executed in the early 40's and by going out into the islands I was compelled to go practically to the point at which the meander corners were located; in other words, the original surveys were executed so well that every point and every body or Lake was represented truly on the plat and though they were very irregular
114 Lakes necessitating short courses and distances they truly meander the Lakes.

Q. Now were those lines run on a uniform elevation.

A. Yes, sir, they would have to be run on a uniform elevation to show every point if they were not it would not show up in the sense that it did.

Q. Have you ever seen any other surveys in which that occurred?

A. I have not seen such perfect surveys in irregular bodies of water but I have seen surveys that correctly represented the shore line of Lakes and follow very closely the contour.

Q. In running the meander line of a Lake or other body of water it is not customary for a surveyor to establish a contour line and follow that?

A. No, sir, the surveyor does not have to use the level, he follows the contour of the water, going to the water level in running his meander line he merely follows the border of the water or the sinuosity of the stream.

Q. That is what they generally try to do?

A. Yes, sir, that is what they should do to make a correct survey.

Q. Now of course his ability to do that might depend upon conditions?

A. What conditions do you refer to?

Q. Physical difficulties?

A. Well, there might be some physical difficulties in following the shore of a Lake as there might be bushes that he would have to remove but in following the shore line that is not usually the case.

Q. From the standpoint of an accurate survey he should follow the border of the Lake?

A. Yes, sir, that is what the Land Office tries to get and has always wanted accurate surveys.

Q. Now, that is the idea that you accurate surveyors try to attain?

A. Yes, sir.

Q. But is it not a fact, Mr. Clement, with common practice in making surveys for the surveyors where there were tongues or small peninsulas jutting out to cut the point instead of running around?

A. In some cases they done that incorrectly,
115 however, I might add.

Q. From an engineering standpoint?

A. Yes, sir, from a surveying standpoint.

Q. Mr. Clement with particular reference to Section 24, is it not a fact that the meander line as run by Warren in some places projects out into the Lake?

A. The plat so indicates.

Q. Mr. Clement taking off of Section 24 the strip of land lying between the Warren meander line and the so-called Kidder meander line and adding to it the portion lying between the Warren so-called meander line and the Kidder line is not Section 24, according to the Kidder

survey of a smaller area than according to the Warren survey?

A. Well, I could not give you the exact figures but from computing it roughly I would say that it might be fairly close; in other words, there is, perhaps, as much water included in the Warren survey as the land excluded by just judging from this plat.

Q. In other words while Warren according to the Government's contention in the exclusion of land in Section 14, defined on that resurveyed plat as Lot No. One he at the same time erroneously included in Section Twenty-four a quantity of land which was in reality water about equal in proportion to what was excluded?

A. That's true.

Q. So that Mr. Clement the fractional Section 24, as shown on Kidder's survey contains about the same acreage as shown in Warren's survey?

A. It contains about the same area of high land I would judge approximately the same.

Q. Mr. Clement, in reference to Section 3, are not the same conditions true?

A. We have computed all of it in Section three, that shows that there was twenty-three acres of land submerged area returned as land in the Warren survey below the 173.09 foot contour and 20.3 of upland was omitted from the Warren survey; in other words, about three acres more of submerged land in Section Three than was omitted.

Q. In other words, Mr. Kidder's survey shows less land by about three acres in Section Three than
116 Warren's survey shows?

A. Well, I think that is a question that is rather hard to answer in this respect, the Kidder survey in retracing the Warren meander line from an engineering standpoint re-established it at the exact location that

Warren had his meander line and this land was returned by Warren as all land, now that is true in the re-establishment of the Warren meander line and the meander line falls below the 173.09 foot contour, which land was returned as land in the Warren survey.

Q. And sold by the Government?

A. It was disposed of.

Q. Now don't the facts to which you have just testified, show that Warren returned as land tracts that were really water aggregating in area more than the tracts of land which he omitted to survey?

A. Yes, sir, that's true.

Q. According to the Kidder re-survey?

A. Yes, sir, by about three acres.

On re-direct examination he said:

By Mr. Hunter:

Q. Mr. Clement, in your testimony you have mentioned the submerged lands in Arkansas, I will ask you to state whether or not you performed any work as a surveyor on behalf of the Government in the case of the United States vs. Lee Wilson & Company?

A. Yes, sir, I surveyed land in the so-called Moon Lake which was involved in the case of the United States vs. Lee Wilson & Company.

Q. Was that case tried before Judge Trieber in the United States Court?

A. Yes, sir.

Q. You represented the Government in the survey of the area involved in that suit?

A. Yes, sir.

Q. You have had considerable experience as a surveyor?

A. Yes, sir.

MR. ARTHUR D. KIDDER, a witness for the plaintiff being first duly sworn, testifies as follows:

On direct examination he said:

117 By Mr. Hunter:

Q. Mr. Kidder, are you the Arthur D. Kidder referred to in the admissions of fact in this case?

A. Yes, sir.

Q. Are you Supervisor of Surveys for the General Land Office?

A. I am.

Q. What experience have you had in surveying work?

A. I have been with the General Land Office for nearly eighteen years, will be eighteen years on July 24, 1918, I have been continuously in the work during that period. The work has taken me in different States and to various classes of surveys which work has been engaged in by the General Land Office.

Q. How long have you been a surveyor?

A. I have considered myself competent to execute surveys since I graduated nineteen years ago.

Q. You have been with the General Land Office eighteen years?

A. Yes, sir.

Q. How long have you been Supervisor of Surveys?

A. Since July, 1910, about eight years.

Q. State whether or not you made a survey of the lands bordering Ferry Lake in 1913-1914, that is a resurvey of this area and I will ask you to state where you began your work at that time as represented on this resurvey plat referred to which has been offered in evidence?

A. Yes, sir, that re-survey was executed at that time under my personal directions and supervision and I personally took a responsible part in the work.

Q The resurvey referred to is represented on the plat offered in evidence in case of the United States vs. Jeems Bayou Fishing & Hunting Club and marked Plaintiff No. 8 in that case?

A. It was.

Q. Was all the work done under your direction and supervision Mr. Kidder?

A. It is.

Q. State whether or not the extension survey shown on supplemental plat of Township 20 North Range
118 16 West offered in evidence was executed by you or under your direction and supervision?

A. It was.

Q. How much time was spent in 1913-1914 in the execution of the resurvey of this Township?

A. A little more than six months was spent in the execution of the resurvey and examining the topography and executing the topographical survey in connection with the resurvey.

Q. When was the extension survey represented on the supplemental plat approved March 28, 1917, begun?

A. It was begun on December 12, 1916.

Q. When was it completed?

A. June 30, 1917.

Q. Were you present on the ground when all of the surveys represented on the plat referred to as having been executed by you or under your supervision were made?

A. I was.

Q. State whether or not the surveys as executed by you with respect to the subdivisional and meander lines, corners and angle points shown thereon are correct?

A. The surveys as represented on the resurvey plat approved July 24, 1916, and the supplemental plat in two parts approved March 28, 1917, were in every respect and every subdivisional line, meander line, corner and angle

point shown there were correctly established to the best of our skill and ability.

Q. State whether or not the surveys in every respect executed by you and under your supervision were correctly executed?

A. They were.

Q. I will ask you to state whether or not these surveys were executed in accordance with the most modern improved appliances?

A. They were.

Q. What have you to say in a general way in regard to the instruments used in making those surveys?

A. We used the standard equipment adopted by the General Land Office and these instruments were of the latest model and in perfect condition, they were
119 carefully adjusted before beginning the field work and tested in every respect and found correct. Steel tapes were used in making the measurements, which steel tapes were compared with a standard steel tape and found correct before the beginning of the field work.

Q. You retraced the Warren survey made in 1839?

A. We did.

Q. Now your retracement and reestablishment of that survey is shown upon the resurveyed plat marked Plaintiff 8 in the case of the United States vs. The Jeems Bayou Fishing & Hunting Club is it not?

A. It is.

Q. State whether or not in retracing the Warren line you ascertained that A. W. Warren omitted any area of land throughout this township?

A. Yes, sir, that developed in the process of the resurvey of Township 20 north Range Sixteen west.

Q. How much land did you find had been omitted by A. W. Warren, surveyor, throughout the township?

A. I believe that I testified in regard to that point in the case of the United States vs. The Jeems Bayou Fishing & Hunting Club.

At this point the taking of testimony was continued until May 9th, 1918.

May 9, 1918, all parties being present, the trial of the above numbered and entitled cause was resumed.

ARTHUR D. KIDDER, a witness for the plaintiff being on the stand his direct examination was resumed.

By Mr. Hunter:

Q. Mr. Kidder, when Court took a recess yesterday afternoon you were making certain statements relative to the areas omitted by A. W. Warren, now I will ask you if you have completed a compilation of those results?

A. Yes, sir, I have completed a computation but in order to make my answer absolutely understandable I would like to state how I got at the results. I have considered every fractional section as surveyed by A. W. Warren as represented on the plat of A. W. Warren approved August 31, 1839, and my statements in regard to the area omitted from the survey relates to certain parts not shown or represented upon the Warren survey, the total area of upland omitted from the Warren survey I find to be 1047.67 acres, arrived at in this way: 90.41 acres of upland in Sections 31 and 32 surveyed by Robert Boyd in 1854; 280.12 acres in Sections 4, 9 and 10 surveyed by Byron Bradley Bristol in 1871; 617.21 acres surveyed under my personal direction in the winter of 1916-1917; now those areas are all taken from the official plats, they add up 987.71 acres, there

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was in addition $59.90 acres of upland lying between the Warren meander line and the actual shore line of Ferry Lake and James Bayou in this Township that have not been included in any survey, those lands make up 59.90 constituting a very narrow strip of land in front of the Warren meander line and the actual shore line, that narrow strip being between the Warren meander line and the shore line where Warren parallels the actual border of the Lake and in close proximity to it and the area is negligible, absolutely no apparent error in the Warren survey and the strip makes up the land that in ordinary practice emanates to the riparian proprietors under their rights. The 987.77 acres of land omitted by Warren and included in the subsequent surveys and the 59.90 acres omitted by Warren and not included in any subsequent surveys make up the aggregate of 1047.67 acres.

Q. As I understand it from your testimony the lines which separate 59.90 acres of land from the actual shore line of the Lake approximates the contour of the Lake and parallels it?

A. It does very closely.

Q. You could not state as to the position of that line and the manner in which it was run was manifest error?

A. No there is no manifest error in that part of the line as it agrees with the contour of the Lake.

Q. Although it does not follow the mean high water elevation exactly at this point?

A. It does not exactly follow the contour of 173.09 with such precision that it would not leave any land on the outside but it approximates it so closely that the difference is negligible.

121 Q. I will ask you if Warren had run his entire meander line around Ferry Lake at the same position and elevation at which he ran the line along the

shore referred to whether he would have included all of the land in controversy in this suit and all of the land embraced in your extension survey?

A. Yes, he would.

Q. Now, referring to the 987.77 acres, I understand you to say that these areas were not included in the Warren survey as shown by his plat but were surveyed by Robert Boyd, Byron Bradley Bristol and yourself?

A. Yes, sir.

Q. The area which Boyd surveyed amounted to 90.44 acres?

A. Yes, sir.

Q. The amount surveyed by Byron Bradley Bristol was 280.12 acres?

A. Yes, sir.

Q. And the area surveyed by yourself is 617.21 acres?

A. Yes, sir.

Q. Now the area of land mentioned amounts to 987.77 are all upland in character?

A. They are.

Q. Now when was the Boyd survey made?

A. It was made in 1854.

Q. When was the Bristol survey made?

A. It was made in the year 1871.

Q. And your survey represented on the supplemental plat offered in evidence of the extension survey was made in 1917?

A. The winter of 1916-1917.

Q. Represented on the plat approved March 28, 1917?

A. Yes, sir.

Q. Mr. Kidder, I will ask you to state whether the 987.77 acres which A. W. Warren omitted, which were later surveyed by Byron Bradley Bristol and yourself are all in Township 20 North of Range Sixteen West?

A Yes, sir, they are all in the same township.

Q. That is the township in which these lands are situated?

A. Yes, sir.

Q. The lands in suit?

122 A. Yes, sir.

Q. Now, referring to your surveys mentioned in the admission of fact herein, I will ask you to state whether or not in the execution of those surveys you obeyed instructions of the Commissioner of the General Land Office in his letter of September 27, 1913, and the letter dated December 1, 1916?

A. Yes, sir, those instructions were very specific as to the requirements of the field work and every requirement of those special instructions were carefully observed in the field and carried out in detail just exactly as set forth in the special instructions; the special instructions stated just what method and order of procedure the surveyors should follow.

Q. Now, the field notes of surveys made by you have been offered in evidence and I will ask you to examine the field notes and to indicate the pages thereon upon which will appear the method followed by you in making your resurvey and your extension survey and the process followed in retracing and remarking the Warren survey?

A. I will refer first to Plaintiff's Exhibit No. 14 filed in evidence in suit of the United States vs. The Jeems Bayou Fishing & Hunting Club, this is Book A of the field notes of the resurvey and on the cover of this book is listed the various classes of lines included in the resurvey; this book covers the south, east and northern boundary of Township 20 North Range Sixteen west, La. Mer. The field notes relate to the reestablishment of the south, east and northern boundary of Township 20 North Range 16 West and there is an index preceding page 1 that shows the lines included in this survey and retrace and

the page of the field notes where the notes in respect to any one line will be found on page One, there is a description of instruments used in the survey and in pages from 1-3 inclusive, will be found the preliminary observations on polaris and the sun tests and the adjustment of the instruments; on page 4 will be found a description of the corner of Section 7, 12, 13 and 18 on the eastern boundary of Township Nineteen North Range Sixteen West, where we identified the original bearing trees which we used in the reproduction of Warren's survey;
123 on page ten there will be found the field notes of the corner of Sections 3, 4, 33 and 34 on the southern boundary of Township 20 North Range 16 west, La. Mer., where we found the original Warren bearing trees used in determining the position of the southern boundary of this Township; on page 26 will be found the field notes of Warren's bearing trees at the quarter section corner of the eastern boundary of Section 13, Township 20 north Range 16 West; on page 28 will be found the field notes of the Warren original bearing trees at the quarter corner on the eastern boundary of Section 12 Tp. 20 north Range 16 west; on page 37 will be found the field notes of the original bearing trees of the original corners of Section 2, 3, 34 and 35 on the northern boundary of Township 20 N. Range 16 West. Additional field notes will be found on pages 9, 15, 18, 34 and 44 on connections made from the reestablished points on the southern, eastern and northern boundaries of Township 20 N. Range 16 West to the original corners in Township 19 N. Range 16 West and Township 20 N. Range 15 west and Township 21 N. Range 16 west to conform to the reestablishment of the boundary of Township 20 N. Range 16 West. My purpose in making reference to these notes is to show the thoroughness and the correctness of the reestablishment of the boundary lines of this Township.

With reference to Plaintiff's exhibit No. 15 in the suit of the United States vs. The Jeems Bayou Fishing & Hunting Club which is Book B of the field notes of the reestablishment of the boundary line between the State of Louisiana and Texas there is a detailed record of five original mile corners on said boundary line which we identified and used in the process of remaking said boundary but I think it is probably unnecessary to go into any further statements here in regard to said boundary as showing the effect on the particular line in suit. Now with reference to Plaintiff's Exhibit No. 16 in suit of the United States vs. The Jeems Bayou Fishing & Hunting Club this book of field notes is entitled "Field notes of the reestablishment of the subdivisional and meander lines of Township 20 N. Range Sixteen west, in conformity with the original approved township plats." On page
2 will be found an explanation in detail of the
124 methods of reestablishing the corner of Sections
25 and 26-35 and 36 of Township 20 North Range
16 West. This is a very important point in connection with the suit of the United States vs. Mrs. Jesse Larobadiere, et al., in Sections 25 and 36, that explanation will show the agreement between the local surveyors and the point adopted in the resurvey, on page 11 will be found field notes describing the original Warren bearing trees at the quarter section corner on the western boundary of Section 27, which we identified. On page 13 will be found a record of the identification of the original Warren bearing trees at the Quarter Section corner between Sections 1 and 2; on page 22 will be found the field notes descriptive of the identification of the original Warren bearing trees at the Quarter Section corner on the eastern boundary of Section Ten, those bearing trees were found in position and one of them marked, absolutely no question about these bearing trees and they are of great im-

portance in the reproduction of the Warren survey in Section Ten. Now there is another very important reference in the field notes, Book C, Plaintiff's Exhibit No. 16 offered in evidence in the suit of the United States vs. The Jeems Bayou Fishing & Hunting Club; on page 30 and I would like to read that into the record here; it is short and of vital importance in explaining the thorough and technical care with which the Warren traverse line was reproduced "Preliminary to the reestablishment of the original meander line of Ferry Lake and Clear Lake and James Bayou a reproduction was made of the old meander line in each section based upon courses and distances returned in the original field notes and the closing error determined. The errors in latitude and departure were found distributed along each course in proportion to the length thereof, several angle points were finally reestablished that resulted in the reproduction on the ground as follows: "I want to state that that is the strict rule recognized by surveyors and engineers for the reestablishment of any broken traverse line where this meander line and the boundary of a reservation or land grant or private claim of any kind, this process is used to recover the lost points on the traverse line.

Q. State whether or not the process used in that respect was the process used by the Department of
125 the Interior and followed by surveyor in the establishment of lost lines?

A. Yes, sir, that is the process absolutely required by the Interior Department of the Surevyors of the General Land Office.

Q. I will ask you to state whether or not that is the best and only certain process of reestablishment?

A. In the absence of monuments marked at the time of the original survey or noted at the time of the original survey such as posts or bearing trees or natural objects

that might be connected to by the Surveyor that is the only true process of relocating the position of the traverse line. Now with reference to Plaintiff's Exhibit No. 17 offered in evidence in the case of the United States vs. The Jeems Bayou Fishing & Hunting Club this book relates to a survey of the uplands lying between the so-called Warren meander line and the actual mean high water elevation of the Lake in 1812; there is a very important explanation on page One of these field notes; that is a general statement over my own signature preliminary to the going into the correctness of the technical record of the field notes and relates to the special instructions for the field work, what the special instructions provided for and I might read from the second page this extract, which I think of vital importance, being a portion of the second paragraph on page 1: "Said corrective surveys being limited to the particular tracts omitted from the original surveys involving in the opinion of the Department manifest error or material variation between the Warren and Bristol meander lines of Ferry Lake and James Bayou and the actual mean high water elevation in the Lake in 1812." Now this explanation goes ahead to corollate the importance of the official plat approved July 24, 1916, which is the plat of the resurvey and the work was to be under the instructions of the Department contained in letter dated December 1, 1916. On page one will be found the preliminary testing of the instruments and a description of those tests, and on pages 2 to 4 inclusive, will be found the other field notes descriptive of the tests and adjustment of the instruments and observations preliminary to the beginning of the field work and the final checking up of the instruments after the field
126 work was completed. The one other reference which perhaps would be of information to the

attorneys and the Court in reviewing the record in this suit would be the final certificate of the Surevyors and the approval of the Commissioners of the General Land Office of the field notes and plat of the survey, these certificates of the Surveyors corollate the work actually accomplished under the special instructions and include the statement "I have well, faithfully, and truly in my own proper person, and in strict conformity with said instructions, the manual surveying instructions, and the laws of the United States, surveyed all of those parts or portions of T. 20 N. R. 16 W., Louisiana Meridian, in the State of Louisiana, which are represented in the foregoing field notes as having been executed by me, and under my direction." The approval of the Commissioner of the General Land Office is dated March 28, 1917, and reads as follows: "The foregoing field notes of the survey of all of those parts or portions of T. 20 N. R. 16 W., executed by Lester L. Clement and Albert Smith, Jr., United States Surevyors, under the direction of Arthur D. Kidder, Supervisor of Surveys under Special structions dated December 1, 1916, having been critically examined and the necessary corrections and explanations made, the said field notes and the surveys they describe are hereby approved." I think that the field notes answer your question.

Q. I will ask you to state whether or not you and the other surveyors who executed this survey were under oath when you began your work?

A. Yes, sir, our oath of office is required under our appointment with the Interior Department and is taken at the time that we enter upon duty.

Q. Mr. Kidder state whether or not the surveys executed by you were carefully and correctly executed?

A. They were.

Q. State whether or not all subdivisional and meander lines and corners and angle points thereon were correctly established in your survey?

A. They were.

Q. Were the tracts involved in these consolidated cases omitted from the Warren survey?

127 A. They were.

Counsel for Defendant moves to strike out the question and answer, being a mere opinion of the witness on a question of law.

The objection is overruled.

To which ruling, counsel for defendant excepts and asks that this note stand in lieu of formal bill of exception.

Q. I will ask you to state whether, as a matter of fact, without reference to your opinion and view of the law, the land in controversy in these consolidated suits were omitted from the survey of this township made by A. W. Warren in 1839?

Same objection, ruling and bill of exception reserved.

A. It is an absolute fact which has been determined through the process of the survey and developed beyond the shadow of a doubt.

Q. Mr. Kidder, are you the Arthur D. Kidder who testified in the case of the District Court in the Parish of Caddo, State of Louisiana, being the case of H. M. Russell, et al., vs. The Producers Oil Company, et al involving a survey of land in Section Three of this township?

A. I am.

Q. State whether or not any of your assistants who executed the survey of this township likewise were called and likewise testified in that suit, and if so, who were they?

A. Yes, sir, my associates, Mr. A. N. Kimmell and Mr. Fred B. Spofford both testified in that suit.

Q. It has been admitted in the admission of fact in this case that the contour 173.09 as established by your survey was the true mean high water elevation of Ferry Lake in 1812-1839. I will ask you to state whether or not in the execution of your resurvey and reestablishment of the Warren survey you ascertained that Warren had recognized at places on his meander line or places where he terminated his Section lines the same mean high water elevation, either exactly or approximately, and if so, state in detail what you found in that respect?

128 A. I will say that it developed in the course of the resurveys that A. W. Warren had correctly recognized the true mean high water elevation of Ferry Lake and James Bayou at the time of his survey and the evidence in regard to his recognition of that water level was very conclusive, it was brought out in great detail; with reference to Plaintiff's Exhibit No. 5 introduced as evidence in suit of the United States vs. the Jeems Bayou Fishing & Hunting Club on page Ten will be found field notes of the Warren survey of the Fractional Eastern boundary of Section 1 in the field notes "7.50 Clear Lake set post" we reestablished Warren's point in the field at this place and we found it fell almost exactly on the 173.09 foot contour; on page 11 of the same field notes with reference to the eastern boundary of section two reading from field notes "40 chains to Ferry Lake set post" we reestablished this point and found that it was only a short distance removed from the 173.09 foot contour and very slightly different in elevation; also on page 11 with ref-

erence to the eastern boundary of Section 36 the field notes read "60 chains to Ferry Lake at the mouth of a creek set post" we reestablished that point and found its elevation was almost exact on the 173.09 foot contour above mean Gulf level, and it may be of considerable interest and of great importance to know at that place that the ground is flat and a difference in elevation of a foot would mean a horizontal difference of one thousand feet or more, and the fact that Warren established his meander point practically on the 173.09 foot contour is the very strongest form of evidence that he recognized the true mean high water elevation of Ferry Lake at this point.

Q. When you reestablished this point called for by Warren did that coincide with the 173.09 foot contour established by you?

A. Yes, sir, practically coincided; now on page 21 of the same field notes of the Warren survey, which represents the line between Sections 11 and 12 the field notes read "62.50 to Ferry Lake set traverse post" we reestablished Warren's point at this place and it fell almost exactly on the 173.09 foot contour; on page 21 of same field notes with respect to the line between sections 12 and 13 the field notes read "36.50 to the Lake set traverse
129 post" we reestablished Warren's meander corner at this place and found that it fell almost exactly on the 173.09 foot contour; on page 21, with respect to the line between sections 13 and 24 Warren's field notes read "14 chains to the Lake set post" we reestablished the Warren meander corner at this place and found that it fell almost exactly on the 173.09 foot contour; also on page 21 with respect to the line between Sections 10 and 11 Warren's field notes read "49 chains to the Lake set post" that point when reestablished fell exactly on the 173.09 foot contour; on page 22 of the same field notes with respect to line between Sections 3 and 10 Warren's

field notes read "56 chains to the Lake, set post" we reestablished that point and found that it fell very close to the 173.09 foot coutour a very short distance removed and only a slight difference in elevation; on page 24 of the same book of field notes, with respect to the line between Sections 25 and 26, Warren's field notes read "2 chains to the Lake set post", we reestablished that point and it fell exactly on the 173.09 foot contour; on page 25, Warren's field notes, which read "30 chains to the Lake set post"; now that refers to the meander corners between Sections 26 and 35, we reestablished the Warren meander corner and found that it fell very close to the 173.09 foot contour only slightly different in elevation on somewhat higher ground and only a short distance horizontally removed from the actual 173.09 foot contour; on page 25 of the same field notes with respect to the line between Sections 26 and 27 Warren's field notes read "43 chains and 50 links to the Lake set post" we reestablished that point and found that it fell almost exactly on the 173.09 foot contour only a slight difference removed horizontally and only a slight difference in elevation on somewhat higher ground. Now I want to go a little further and bring out the salient features of the Warren field notes which tend to show that he recognized the 173.09 foot contour; on page 26 of the field notes with respect to the Warren traverse line in front of Section One with reference to his meander line of the west bank of Clear Lake of Fractional Section One, Warren has six meander courses through Fractional Section One;
130 the first course reads "South 20.00; the second course reads S. 10 East 12; the third course S. 22 E. 18; the fourth course S. 20 East 10; the fifth course S. 31 E. 10; the last course S. 54 E. 10.50 to the Range line", the first course begins on the northern boun-

dary of Fractional Section 1 at a point previously established by Williamson Jones in 1837.

Q. Williamson Jones was a Surveyor?

A. Yes, sir, and he established the northern boundary of township 20 north Range 16 West and his field notes right at that place will be found on page 6 of the book of field notes that I am reading from "Township 21 N. Range 16 W., survey of exterior lines commencing at a post on the left bank of Clear Lake corner to fractional Townships 20 and 21 N. Ranges 15 and 16 W." we retraced the meander line through Section One following the identical courses and distances that I have read into the record and found the courses when laid down on the ground exactly follow the contour of 173.09 in Section 11; on page 27 of the field notes Warren began at a meander corner of fractional eastern boundary of Section 11 and running north 68 degrees west 24 chains, thence north 75 degrees west 18 chains, thence west 12 chains thence south 84 chains west 16 links, thence south 51 degrees west five chains and 5 links, thence north 60 west 10 chains to the meander corner on the western boundary line of fractional Section 11" we retraced and reproduced the Warren meander line of Section 11 and following the identical courses and distances recorded in Warren's field notes on that line and he is found to agree with and follow the 173.09 foot contour. Again in Section 26 with respect to Warren's traverse line through the Southwest Quarter of Section 26 Warren begins the southern boundary of Section 26 at his meander corner on the border of Ferry Lake and runs north 5 degrees west 10 chains 50 links, thence north 35 degrees west 12 chains thence north 49 degrees west 24 chains thence north 37 degrees west 10 chains and 50 links to his meander corner on the western boundary of Section 26" we have retraced and reproduced Warren's meander line through

131 the fractional Southwest Quarter of Section 26 we began at the meander corner and reestablished and followed the recorded courses and distances reproducing them on the ground exactly and we find that line as thus reproduced exactly following the courses and distances that it falls on the 173.09 foot contour above mean Gulf level; to my mind, the fact that Warren established his meander corners on the boundary of this fractional section every where in very close proximity to the 173.09 foot contour, in some case exactly on the contour and the fact that in Sections 1, 11 and 26 we are able to reproduce his meander lines and find that it agrees exactly with the 173.09 foot contour shows most positive evidence of a recognition by Warren of the true mean high water elevation of Ferry Lake at that time to have been 173.09 foot contour.

Q. When Warren made his survey?

A. At the time of his survey.

Q. I will ask you to state whether or not you reestablished the Warren lines in accordance with his field notes and in accordance with the manual of surveying instructions and rules applicable to surveys?

A. We did.

Q. Mr. Kidder, who selected the area to be embraced in your extension survey of this township shown on the supplemental plat approved March 28, 1917?

A. These selections were made by the General Land Office with the approval of the Secretary of the Interior after conferences with the officials of the Department of Justice.

Q. Did you select the area to be included?

A. Only as I consulted with the Commissioner of the General Land Office and co-operated under his instructions in determining what area should be included in

the extension survey and where no changes should be made.

Q. I will ask you to state whether or not the area was selected on your own initiative?

A. No, sir, those questions were all determined by the Department at Washington and nothing was left to be determined in the field, nothing left to the discretion of the Surveyors.

Q. I direct your attention to the area involved in the consolidated suits being Lot One of Section 3, involved in the suit of United States vs. Chas. W. Lane, et al., Lot No. 7 of Section Ten involved in the suit of the United States vs. J. M. Walling, et al; Lot One?

132 involved in suit of the United States vs. Southwestern Gas & Electric Company; Lot One, Section 24, involved in suit of the United States vs. the Gulf Refining Company of Louisiana, Lot One, Section 25 and lots one and two, Section 36, involved in the suit of the United States vs. Mrs. Jesse N. Laberdiere, and will ask you to state whether or not as a matter of fact and without reference to the law or your opinion of the law, those tracts were omitted from the Warren survey?

Objected to by Counsel for Defendant as calling for the opinion of the witness on a question of law and calling for a legal conclusion.

Same ruling of the Court as heretofore made.

And to which ruling counsel for defendant excepts and asks that this objection be made general to cover all questions and answers calling for the opinion of witnesses on the questions of law without the necessity of renewing said objection, and it is so ordered by the Master.

A. They were omitted from the Warren survey.

Q. State whether or not the tracts of land mentioned lie between the so-called meander line as established by A. W. Warren through those sections and the meander line as established by your survey?

A. They do.

Q. Mr. Kidder, I call your attention to the so-called Warren meander line in Section Three which, according to the plat forms the boundary between the land surveyed by Warren and the land embraced in this suit, Lot One, Section 3, and I will ask you to state whether or not you have examined that line and retraced all of the lines?

A. Yes, I have personally retraced Warren's so-called meander line or traverse line through Section 3 from the southern boundary through to the northern boundary of the section and I have personally been over the land included in Lot one of Section Three.

Q. What have you to say in regard to the
133 character of that land?

A. That land is gently sloping in character and there is some scattering timber on the land, its elevation ranges up to seven feet above the true elevation of the Lake at the time A. W. Warren made his survey and along the line segregating the land of Lot One of Section 32 and the Fractional Southwest Quarter of Section Three as surveyed by A. W. Warren; there is no difference in elevation along that portion of the line to the East or West, there is no difference in the timber species; there is no evidence of a bank of any kind or anything to indicate a body of water whatever or having ever at any time occupied the position of this line which segregates Lot One of Section Three from the balance of the Section.

Q. In your opinion as a Surveyor, are the conditions which prevail today in that land substantially the same as the condition which prevailed in 1812 and 1839?

A. Yes, sir.

Q. What have you to say in regard to the manner in which the so-called Warren meander line was run and its characteristics in regard to direction and elevation?

A. I have given careful thought to that question, or that subject rather, and I have never satisfied myself just how Warren accomplished his survey, but I have retraced that line and have noticed the physical features of the topography along that line and the conditions that existed there and I can see full well the conditions that confronted A. W. Warren in 1839, and I can say this in regard to his survey of Section Three, I am referring to the Plaintiff's Exhibit No. 5 offered in evidence in the suit of the United States vs. Jeems Bayou Fishing & Hunting Club where the field notes of the Warren survey on page 27, with reference to his traverse line in front of Section Three are found. These field notes beginning at his meander corner on the southern boundary of section thirty-three read "N. 20 W. 10." Now I set my instrument at that meander corner on the southern boundary of section three and have set off the bearing of the Warren field notes N. 20 W. 10 chains and found after running that distance that instead of following
134 the border of James Bayou at that place that it ran out into the water, running into water six feet deep at the time of Warren's survey; it would be impossible for me to set the instrument at that angle shown at the end of Warren's first course except for the fact that the Lake has receded, that point was six feet under water at the time of Warren's survey, but I placed my instrument at that place because the Lake had receded, I went along the Warren second course N. 25 W. 10 and

set off that bearing and sighted through the instrument line on the meander course and that course Warren's meander line traverses and emerges from the water and crosses the border of Ferry Lake and begins to ascend to the upland; his angle point No. 2 is above the 175 foot contour, I set the instrument at that point and sighted along the third course which is "N. 34 W. 7 chains" in length and sighting along that course instead of finding that it swung around parallel to the border of James Bayou at this place I found the course was through timber and undergrowth and upland away from the border of Ferry Lake or James Bayou running on ground above the 180 foot contour and his turning point instead of being near the border of Ferry Lake was back in the woods or large timber, I sighted along his fourth meander course, which according to his record is "N. 60 W. 8 chains" in length and when we sighted there we found that the course took us off of the top of the slope and back in the direction of the border of Ferry Lake and at the end of the course it falls below the actual border of James Bayou, I then sighted along Warren's fifth meander course, which the record gives as "N. 12 chains". Now I set up my instrument at angle point No. 4 and sighted north and we measured it and at the distance of twelve chains we found that the line actually paralleled the border of the Lake but it was somewhat below the 173.09 foot contour, in fact it was actually down to the border of the Lake as we find it today but there is a slight slope at this point and the horizontal distance between the two lines was short and the difference in elevation was about six feet; in other words, we could have in meandering that line have been on the 173.09 and in the course of that meander line it was six feet under water and we would
135 have had to resort to triangulation or the use of boats and platforms in order to have mea-

sured the course, however, at Warren's angle Point No. 5 at the end of that course we found we were again actually on the border of James Bayou almost exactly on the 173.09 foot contour and after fixing that point we sighted along Warren's sixth meander course, which is "N. 20 E. 14 chains"—now at this place it is of great interest to know there is an embayment of James Bayou, when we sighted along the course, N. 20 E. 14, we find that it crosses that embayment which takes us out in the water eight feet below the level of the lake in 1839, it took us down to the 165 feet contour and we had to get in our rubber boots to measure that line, Warren had to use boats or something or had to resort to triangulation or some other process to get the distance that he records of fourteen chains. We measured out the fourteen chains and we found that it brought us to the border of James Bayou, we then sighted along Warren's seventh meander course "N. 16 E. 16" and when we set up the instrument at angle point No. 6 and sighted along the seventh course we found that it actually paralles the 173.09 foot contour, after measuring that line out we found that it fell on the border of James Bayou and at the end of the course at angle point No. 7 was on a bluff sloping down to the border of the Bayou and at that point his turning point was well chosen, then we sighted along the last meander course, which was "N. 11 E. 11" and in sighting along that course we found that in starting out on it that it paralleled the border of James Bayou but in measuring out the distance of eleven chains in length we found that it crosses a tributary or ravine which carried the water during the rainy season and was dry during the summer season and at the end of our course we came up to the meander corner on the northern boundary of fractional Section Three and there we were exactly on the border

of James Bayou and the elevation was only slightly above the 173.09 foot contour and the horizontal distance removed from the actual position of the contour was negligible, and that was the point that had been determined in the survey of Williamson Jones in 1837, which was connected to by A. W. Warren in 1839 and has been connected by ourselves in 1914, and we all agree that that was the border of James Bayou in 1812, 1839 and
136 1839.

Q. How is the first course of the meander line mentioned shown on the plat Mr. Kidder that you now have?

A. It is shown on the re-survey plat approved July 24, 1916, which has been filed in evidence in the suit of the United States vs. the Jeems Bayou Fishing & Hunting Club, and marked Plaintiff's Exhibit No. 8, the meander corner of the southern boundary of Section Three is shown—that is where Warren established it, and the first meander course is shown as the black line extending from the southern boundary of Section Three in a northwesterly direction into the embayment of Jeems Bayou and the figure One on that plat shows the position of Warren's angle point.

Q. Is that figure One shown on this plat, is that the position where the water was on the land?

A. There is no water on it today but it was six feet under water during the raft period and at the time of Warren's survey.

Q. When you went there to re-establish these lines did you locate that point in accordance with Warren's field notes?

A. We did.

Q. You sighted along that line as he established it?

A. Yes, sir.

Q. In sighting along that line state whether or not it follows the contour of the lake or James Bayou?

A. No sir, it does not. In sighting along that course and measuring out the distance called for we found that he ascends after leaving angle point One throughout the entire length and there is a difference in elevation between angle point One which is at the beginning of the second course and angle point two which is at the end of the second course shown on our re-survey plat is somewhat over eight feet.

Q. Now there is an ascension of over eight feet from where that line begins or starts?

A. Yes, sir, there is an ascension of over eight feet from angle point One to angle point 2.

Q. You sighted along from angle point One
137 to angle point Two did you not?

A. Yes, sir.

Q. Now in what direction did you sight, towards the lake or away from the lake?

A. We found that the object in view of the telescope in making that sight was hill land beyond the border of James Bayou.

Q. In making that sight I will ask you to state whether or not it was apparent that you were looking away from the Lake?

A. Yes sir, it was very apparent, actually looking out from the Lake to a point of low land beyond the border of the Lake.

Q. Now what have you to say with reference as to whether or not the Warren meander line which forms the boundary between the land involved in this suit and the land surveyed as to whether it is run with reference to the contour of the lake or the border of the lake or any other water course?

A. It is very apparent in re-tracing that line that no relationship could be established whatever between the position of the Warren traverse line segregating Lots One and Two of Section 3 from the Fractional Southwest quarter of Section Three and the border of James Bayou. In measuring along that line we were going over the low hill which projects out into James Bayou at this place running through upland timber and undergrowth. There is nothing on the ground to indicate the border of James Bayou ever occupied that position.

Q. Does that line parallel James Bayou?

A. No, sir.

Q. If it was intended to represent the meander line of James Bayou or Ferry Lake or any other stream of water course state what in your opinion as a surveyor, as to its correctness or not?

A. I would say that it was absolutely incorrect.

Q. State whether or not the error was apparent or manifest in your opinion as a surveyor?

A. That error was apparent and manifest and was observable the moment the eye sighted along his traverse in that place.

Q. Why?

138 A. Because we were departing from the border of James Bayou and we were ascending high ground, going over the hill projecting into James Bayou at this point there was not any bank along this line, there was nothing to indicate that the Warren line in this place was in agreement with the bank of the lake, no action of any body of water in the way of wave action, no cutting, and we were climbing a hill to the top of a bank above the bank until we got to the opposite side and it was apparent that Warren himself when he run over the hill in my opinion that he was not following the border of James Bayou, every indication on the ground supports that con-

clusion, that low hill that projects into James Bayou at this place was in the same condition in 1839 as we found it in 1914.

Q. I will ask you to state whether or not in your opinion as a surveyor there is anything in the topography of the country or was at the time of the Warren survey excusing or justifying the running of the line or the elevation at which it was run?

A. Nothing whatever.

Q. What have you to say in regard to the topography of the Lot in question?

A. Well this Lot is a portion of the low hill that projects into James Bayou at this place, Lot One occupying a little more than half of that land or hill and is sloping everywhere sufficient to give good drainage, there is nothing in the way of a basin, marsh or pond in the description whatever of Lot One of Section Three.

Q. Is there any evidence of swampy conditions of any kind?

A. No, sir.

Q. State whether or not the Oil Well known as Lane No. 3 is situated on the land in controversy in the suit of the United States vs. Charles Lane et al?

A. Yes sir, that well is indicated on the supplemental topographic plat marked Plaintiff No. 28 in the suit of the United States vs. the Jeems Bayou Fishing & Hunting Club and marked Plaintiff F. in suit No. 1153, the Oil Well is represented by small round black mark with a line run through it, according to our legend which indicates the position of an abandoned oil well and
139 it is marked Lane No. 3 Producers Oil Company, it is not far from the central point of Lot One Section Three and it is located almost exactly on the 180 foot contour.

Q. Now I will ask you to refer to Lot Seven of Section Ten, being the property involved in suit of the United States vs. James Walling et al and please state whether you are familiar with that tract of land?

A. I am.

Q. Did you survey it?

A. Yes sir, it was surveyed under my personal directions, I have been over the land and I have been along the line, I have seen every point marking the boundary of that Lot.

Q. Are you familiar with the Warren traverse line which divides the area surveyed by him from the land involved in this suit?

A. I am.

Q. Please state the manner in which that line was run and its characteristics in respect to direction, the character of land over which it was run and whether or not it follows the contour of Ferry Lake or approximates the contour?

A. Now in order to establish that line in the field it was necessary to begin at Warren's meander corner on the eastern boundary of Fractional Section Ten, which point was exactly on the 173.09 foot contour, I went to that point and I sighted N. 74 W. that is the bearing given by Warren in his field notes on page 27 referred to as Plaintiff's Exhibit No. 5 in the suit of the United States vs. the Jeems Bayou Fishing & Hunting Club, when I set up at the meander corner on the eastern boundary of section Ten and sighted N. 74 degrees W. I saw that the line was not far removed from the border of Ferry Lake as it existed in 1839. I measured out that course 16 chains in length and found that the angle point fell at a position not far removed from the 173.09 foot contour only at an elevation slightly above that contour and apparently that far Warren's meander line was cor-

rect, however, there was nothing to indicate any apparent error at that place, then after measuring out the
140 first course and that established the first angle point I sighted due west, which is the recorded course of the Warren traverse line given on page 27 of the field notes and I saw that that line was actually paralleling the border of Ferry Lake, it was only slightly higher in elevation but it was following the contour of the lake and no apparent error. I sighted through the instrument and measured out the line and found in the course of eight chains that it fell on the 180 foot contour but only shortly removed from the actual border of Ferry Lake; at this point with nothing to indicate any error in the Warren survey up to that point. Then I sighted N. 78 degrees west on Warren's third meander course, here the moment that I turned off that angle I saw that we were sighting back into the woods running on to high ground, the timber was heavy, we were getting away from the border of Ferry Lake, that course N. 78 degrees W. is a part of the line segregating Lot Seven of Section Ten from the Fractional Southeast Quarter of Section Ten, we measured out that course the length of ten chains, as recorded in the Warren field notes and we found that we were a very considerable distance removed from the border of Ferry Lake, we were on ground about eight feet in elevation above the actual border of Ferry Lake a gradual slope of that eight feet in elevation made a considerable distance that turning point was back in the woods, I then sighted S. 65 degrees W. on Warren's fourth meander course, that line is also one of the lines segregating Lot Seven of Section Ten from the Fractional South Half of Section Ten as surveyed by Warren. Now in sighting that course it was apparent that we were not getting any farther away from the border of Ferry Lake but the line ran through heavy timber, undergrowth and remained at

this high elevation, it was impossible to tell in sighting through the instrument whether we were getting any closer to the border of Ferry Lake, it appeared that we were keeping about the same distance away from the border of Ferry Lake back on high ground, we measured out that course five chains in length and there was nothing at the end of the course to show why Warren should take a turning point in that position; it is interesting to note in his field notes, recorded that the fourth traverse course is S. 65 degrees W. the fifth traverse course is S. 50 degrees W. a distance of only five degrees you naturally expect some reason for turning an angle point—there was absolutely no apparent reason why any angle point should be put in that place, but we sighted S. 60 degrees W. as recorded in the Warren field notes and measured out the course of ten chains in length, as recorded in the Warren field notes and we found that we were keeping about the same distance from the border of Ferry Lake, keeping on the same high ground, at the turning point we set up the instrument and sighted S. which is the course recorded in the Warren field notes and it was apparent the moment that we turned off that angle and made a sight that we were returning to the border of Ferry Lake, at the end of the course of five chains in length we found that we were again exactly on the border of Ferry Lake. The description that I have given you includes the whole of that part of Warren's traverse line of Section Ten which segregates Lot Seven of Section Ten from the Fractional South Half of Section Ten as surveyed by Warren.

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Q. Now when you reached the Lake were you on the 173.09 foot contour?

A. We were right on that 173.09 foot contour at that place.

Q. How is the point where Warren turned away from the Lake shown on the plat of re-survey?

A. That point is found shown on the supplemental topographic plat marked Plaintiff's Exhibit No. 10 offered in evidence in suit of the United States vs. Deems Bayou Fishing & Hunting Club, the place where Warren turned away from the border of Ferry Lake is shown by the figure 22 on the boundary of Lot Seven of Section Ten; now that 22 represents or indicates angle point 22 of Section Ten; by way of explanation I want to call attention to the fact that these points were numbered in the opposite direction from the direction followed by Warren in his traverse line; Warren began on the eastern boundary of Section Ten and run North or northwest through Section Ten and complete his traverse on the northern boundary of Section Ten; it was necessary in the resurvey to combine Bristol's traverse line of Section Ten surveyed in 1871 with the Warren traverse line in Section Ten
142 and in combining those two traverse lines it was necessary to adopt an arbitrary arrangement of numbers and we began on the western boundary of Section Ten and numbered the angle points in a consecutive series east through the section to angle point 23, which is really the end of Warren's first course, and angle point 22 is the end of Warren's second course.

Q. What you call angle point 22 is where he departed from the lake?

A. Yes, sir.

Q. And you sighted along that course?

A. Yes sir, from angle point 22 to angle point 21.

Q. And in sighting along that course what did it disclose to your view in the instrument, the lake or what?

A. Well we were sighting away from the lake, there was nothing in view through the instrument but the heavy timber and the higher ground to the northwest and that

course ascended then from the border of the lake across the high ground.

Q. It ascends across high ground?

A. It does.

Q. State whether or not it was apparent in sighting along that course that Warren was departing from the border of the lake?

A. Yes, sir, it was absolutely apparent the moment we sighted along that course and we took a back sight on that line and found that it was running off from the border of the lake.

Q. Now how is the other end of that course designated on the plat?

A. It is designated on the plat as angle point No. 21 by the figures 21.

Q. Now in sighting along that course what have you to say as to whether you were sighting towards the lake or towards or across the timbered lands?

A. Sighting from angle point No. 21 along the next course in the direction of angle point No. 20, which is shown by the figures 20 on the plat and taking that sight, it was impossible to see through the instrument that we were getting any further away from the lake or returning to the lake or paralleling the lake, but by turning to one side and observing the apparent distance be-
143 tween that line as projecting and the border of the lake, we noted that we were keeping about the same distance from Ferry Lake and about the same elevation, that was true at angle point 20.

Q. Did Warren turn a course south from angle point 19?

A. Yes, sir.

Q. But suppose you sighted from angle point 19 towards angle points 20 and 21, in what direction would you have been sighting, from the lake or towards the lake?

A. From angle point 19 sighting over from towards angle point 20 it would not be apparent whether you were really getting any further from the border of the lake or coming closer to the lake, but measuring out that line we could see that we were keeping about the same distance from the border of the lake, keeping on high ground and practically the same elevation, making no difference which way you would go along there, along that course, you could not tell being so far from the lake that it would be impossible to determine without measuring whether you were getting close to or further away from the lake.

Q. Now you sighted from angle point 19 to angle point 26?

A. Angle point 26 is on a direct line from angle point 19 to angle point 18, angle point 18 is not shown on the supplemental plat but angle point 18 is shown on the resurvey plat and represents Warren's actual turning point; angle point 26 is on the line from angle point 18 to angle point 19 and marks or represents the intersection of the 173.09 foot contour; in sighting from angle point 19 to angle point 26 it is very apparent that we were again returning to the border of Ferry Lake, descending to lower ground, and the chain-men in measuring out that line were on a slope and required the level and tape and used a plum line on account of the difference in elevation; in measuring down from angle point 19 to angle point 26 and angle point 18, which are in the same straight line.

Q. As I understand it that portion of the Warren traverse line leaves the lake at angle point No. 22?

A. Yes, sir.

144 Q. How was that point situated with reference to the mean high water elevation of the lake?

A. Only a short distance removed horizontally and at a slightly higher elevation, but the ground slopes sharply

at this point so that the difference in elevation is really more apparent than the horizontal distance.

Q. The line stops, or that portion of the meander line stops at the place where he returns to the lake at angle point 26, which is on the 173.09 foot contour?

A. Yes sir, angle point 18 is the point where Warren actually returns to the border of Ferry Lake and the point marked 26 is exactly thirty six feet removed from angle point No. 18, and on a direct line from angle point No. 18 to angle point No. 19.

Q. Now Mr. Kidder, I will ask you to state whether or not in running that portion of the meander line referred to, Warren departed from the lake at a point approximately on the mean high water elevation, and returned to the lake on his last course at the mean high water elevation?

A. Yes sir, he did.

Q. What have you to say, in your opinion as a surveyor and from your knowledge of the line itself, as to the correctness or incorrectness of the traverse line of Warren, about which you have been talking?

A. I would say from a surveyors point of view, that Warren's traverse line segregating Lot Seven of Section Ten, from the fractional South half of Section Ten, as surveyed by A. W. Warren, does not comply with the requirements of a meander line in any particular, and that is is an error and that the error is obvious, as soon as that line was retraced on the ground, and the error is very apparent.

Q. If intended as a meander line, I will ask you to state, if the error is apparent and manifest?

A. It is.

Q. Lot seven involved in this suit, in section Ten is it not?

A. Yes, sir.

Q. State whether or not any other lands in section Ten were omitted from the A. W. Warren survey?

A. There were other lands in Section Ten,
145 to the extent of 193.13 acres omitted from the A. W. Warren survey.

Q. Are those lands shown on your Extension Survey?

A. They are.

Q. And represented on the supplemental plat?

A. Yes, sir

Q. Referring to Lot one of section Thirteen, I will ask you to state whether or not you are familiar with that Lot, and with the Warren traverse line segregating it from the land that he surveyed in that section?

A. I am.

Q. Was a survey of Lot One of section Thirteen made by you, or under your personal supervision?

A. It was.

Q. Was the retracement of the Warren meander line, that divides the land in question from the land surveyed by him in that section likewise retraced by you, or under your supervision?

A. Yes sir, I personally retraced and reestablished that line.

Q. What is the character of the land in Lot One of Section Thirteen?

A. The general character of the land in that lot has the appearance of a low hill projecting out into Ferry Lake. The lot has the appearance of a peninsula, but an examination of the ground indicates that it is an integral part of the up land embraced in section Thirteen and included in the Warren survey, and it is at a considerable elevation above Ferry Lake, and compared with the relative elevations around the border of Ferry Lake, might be considered the highest hill, but in comparing that hill or small margin may be termed a low hill. The actual

elevation is shown on the topographic plat running up to twenty two feet above the mean high water elevation of Ferry Lake. (In looking over lot one of Section Thirteen today, there is not much timber to be seen, unless you approach the hill, as it has been largely removed, but the upper part, or northern part of lot one of section thirteen still retains its virgin forest growth. Angle point No. 2 of section Thirteen shown on the Supplemental plat, is at an elevation of seventeen feet above the lake level. There is a tributary that empties into Ferry Lake that traverses Lot one, its lowest point, and is a considerable water shed, and water is to be found in this tri-
146 butary most any season of the year, water in pools, and you will find sedimentation in the outlet of this stream, necessarily a flat area, with a heavy growth of forest trees along this tributary. The configuration of Lot one of Section Thirteen, is rather peculiar but it is one that is made peculiar by the irregularity of the Warren survey, the Warren traverse line has gone over this hill and extends out into the lake and it has a descend to the region of this tributary, then angles up to the high ground again. With regard to the topography, and the actual border of Ferry Lake, if you will notice following the out line of the contour 173.09 on the plat, has comparatively smooth curve, that agrees with the actual border of the lake. The traverse line in its turnings did not bear any relation whatever to the border of Ferry Lake, resulting in a very peculiarly shaped lot, even notwithstanding it is very apparent that it is an integral part of the up land included in the Warren survey. Nothing to separate it from the up land that Warren included.

Q. I will ask you to state whether the Warren meander line dividing that lot from the land surveyed, was run along about the margin of any stream or water course?

A. No, sir.

Q. Is there anything in the topography of the ground or otherwise to indicate a water course of any lake along that line?

A. No sir, with the single exception of the traverse line between Angle points 3 & 4 there is a water course at that place on the traverse, which I have referred to as a tributary of Ferry Lake and it is noted in Warren's field notes on page 26 of Plaintiff's Exhibit No. 5 previously referred to, where Warren gives the course E. 5 chains. Now the inference, reading Warren's field notes he is following the border of Ferry Lake, and that course E. 5 chains is actually running upstream in this tributary that enters Ferry Lake. At this place it is following along the right bank of that stream, going up stream to Angle points 4 and 3, and they come both very close to the bank of that stream. With that Single exception there is no point on Warren's traverse line, segregating Lot one of Section Thirteen from the land included in the Warren survey in Section Thirteen, that at any
147 place shows any proximity to the bank of a stream or border of the lake, until he returns to the border of the lake at his Angle point No. 11.

Q. What is the first course of that portion of the Warren meander line from Angle point No. 24 to angle point No. 6, shown on topographic map, I will ask you to refer to the topographical plat and state whether or not Warren departed from the lake at Angle point No. 24, or indicated the angle point where he did depart from the lake, in running this line?

A. Angle point No. 24 is located on Warren's traverse line between angle points Nos. 6 and 7, Angle point No. 7 shown on the resurvey plat represents Warren's turning point, Angle point No. 6 shown on both the resurvey plat and the topographical plat and angle point No. 24 shown only on the topographic plat, and that point in-

dicates the actual point of intersection of the Warren traverse courses and the contour line 173.09, and shows the exact point on the ground where Warren first departed from the border of Ferry Lake, where his line ascends to the top of the hill.

Q. The point of departure then began at angle point No. 24 shown on the Supplemental plat and continued to what point on that plat?

A. It continues to angle point No. 11, shown on the topographical plat.

Q. Now I will ask you to state whether or not the tributary of Ferry Lake, referred to in your testimony is at angle point No. 24 or anywhere along the meander line from angle point No. 24 to angle point No. 11?

A. It is not at angle point No. 24 nor at angle point 11, but it will be found on the line connecting these points and between that portion of the line indicated between angle points Nos. 3 and 4. This portion of the Warren traverse line follows the bank of the tributary.

Q. That is his first course after departing from the Lake, he was following the banks of this tributary?

A. No, sir, he was not.

Q. State whether or not Warren ran across the tributary, on this course between angle points 5 and 4? Referring to the tributary I will ask you to state whether that is a large or a small stream?

A. A small stream, with one or two square miles of water shed I would say.

148 Q. How did that stream run with reference to the Warren meander line, in this section dividing the land in suit from the other land, was it parallel his line or at right angles?

A. That tributary crosses the fractional Northeast quarter of section thirteen and it parallels Warren's traverse line from angle point three to angle point four,

then it crosses Warren's traverse almost at right angles between angle points four and five.

Q. In running the traverse line dividing the land in suit from that land surveyed by Warren, was Warren paralleling this tributary or stream throughout the length of his line?

A. No, sir, he paralleled that stream only one course. I might conclude my statement by saying that by any process of running a meander line through the fractional section thirteen from south to north he would have necessarily have to cross it.

Q. I will ask you to state whether or not, there is anything in the existence of the stream referred to as a tributary, which in your opinion justified the running of the line run by Warren in the position in which it was run?

A. None whatever. That stream, or tributary of Ferry Lake and Warren's meander line cross, he must necessarily cross that tributary to get through fractional section.

Q. In sighting along the first course of the Warren meander line from the point where he departed from the Lake, I will ask you to state whether you observed through the instrument, the Lake or that he was apparently departing from the lake?

A. Yes, sir, it was very apparent as soon as the instrument was set up and the angle turned, that we were compelled to ascend the bluff bank and go on to the high ground, and in measuring up in the course of running through we had to continue to ascend until we got to angle point No. 6, at a place far removed from the border of Ferry Lake, and we could see high ground between that point and the lake to the west, and to the east the ground actually sloped towards angle point No. 6, from the East.

Q. I will ask you to state whether the Warren meander line referred to follows the contour of Ferry Lake?

A. It does not.

Q. Does it parallel the border of the lake?

149 A. Not through lot one.

Q. State whether or not, in your opinion as a surveyor, it was run without reference to the contour?

A. That is very apparent that it was run without reference to the contour.

Q. In your opinion as a Surveyor and your knowledge of the topographic situation, state whether or not the so called traverse line referred to, is or is not correct?

Q. At the traverse line, or that portion that segregates Lot one of Section Thirteen from the Fractional Section Thirteen, as surveyed by A. W. Warren is absolutely incorrect as a meander line.

Q. State whether the error is apparent and manifest?

A. The error is manifest.

Q. What is the area of land in Lot one of section thirteen?

A. 27.87 acres.

Q. Is it up land in character?

A. It is.

Q. As I understand the shape of this lot was due to the error in the Warren survey?

A. Yes, sir, absolutely.

Q. Could it be avoided?

A. No, sir, depended upon the Warren survey. That is the result of the retracement of the Warren survey and then running out the true configuration of the lake on one side, which is the west side, the smooth curve actually made in the border of the lake and on the opposite side, which is the eastern and northern boundary of lot

one irregular line, which is the result of the absurdity of the turns in the Warren traverse line.

Q. Referring to lot one of section twenty-four, in one of these suits, and state the character of that land?

A. That land is a triangular area with the broad side of the triangle laying on top of the hill and the two sides of the triangle agreeing with the border of the lake with a gentle slope everywhere from the top of the hill to the border of the lake. The soil is rather sandy in character, been cultivated but there is still evidence of former forest around the border of lot one of section twenty-four. The area of lot one is 11.49 acres. The slope everywhere is sufficient to give the lot complete drainage.

Q. Are there any basins, ponds or marshes on the tract?

A. No, sir.

Q. Swamp?

A. No, sir.

Q. Or swamp vegetation?

A. No, sir, none whatever.

Q. Is the land up land in character?

A. It is.

Q. What have you to say as to the character of the Warren meander line segregating the land in this suit, being the suit of the United States vs. Gulf Refining Company, No. 1158, from the other land surveyed by Warren in that section?

A. This is a clear case of cutting over the point of land projecting into Ferry Lake at this place. The meander line is a short cut you may say from the border of Ferry Lake at angle point No. 7 to the border of Ferry Lake at angle point No. 5. There is no difference in the land on either side of the Warren meander line between

angle points five and seven, same topography and timber growth.

Q. Same topography and timber growth on both sides of the line?

A. Yes, sir.

Q. I will ask you, is there anything in the physical nature of the ground, in your opinion, as a surveyor or your knowledge of the topography, to justify the running of the line as Warren run it?

A. Nothing whatever between angle points five and seven.

Q. Does that line mark the configuration of Ferry Lake or the sinuosities of the shore?

A. No, sir, it does not.

Q. Is it run with reference to the contour?

A. No, sir.

Q. Is it run without regard to the contour?

A. It is.

Q. What in your opinion as a surveyor and your knowledge of the ground, would you say as to the correctness or incorrectness of that line?

A. It is a very incorrect line between angle points five and seven.

Q. Are those the portions of the line that
151 result in the exclusion of the area involved in this suit?

A. Yes, sir.

Q. State whether or not the error is or is not a manifest error?

A. It is manifest to me.

Q. In what way, how was it manifest?

A. In retracing the Warren meander line of section Twenty-four I put my instrument at angle point five and set off the bearing indicated by Warren's field notes and I found in sighting that it was over high ground,

turning away from the border of Ferry Lake, and in measuring out the course we were compelled to climb the bluff and get on top of the hill, and found angle point six on high ground far removed from the border of Ferry Lake, in cultivated field and a back sight from angle point six to angle point seven found it running through heavy timber, very dense undergrowth descending a very precipitious slope. The timber so heavy could not tell anywhere near the border of Ferry Lake until you got to angle point 7, there I found that we were again at a point very close to the border of Ferry Lake.

Q. State whether or not there is a well defined bluff on the border of Ferry Lake at that place?

A. Yes, sir, along the south side of fractional lot one the bluff is high and steep and very regular.

Q. Were those Warren traverse lines which segregate this land from the other land surveyed by him, begun with reference to angle point 5?

A. Very close to the base of the bluff, very close to the border.

Q. And the line ascends over the bluff?

A. Yes, sir.

Q. Run over hills?

A. Yes, sir, and so close to the bluff that a sight through the instrument that it was impossible to see through the short distance from angle point 5 to angle point six, had to take short sights to get to the top of the bluff and set up the instrument again and continue the course in order to get on ground so that we could sight, get a clear view, as from angle point five to angle point six it was impossible to see through there,
152 if the timber was removed it would be impossible to see angle point No. 6, on account of the fluff. [bluff].

Q. What does angle point No. 6 represent?

A. Angle point No. 6 represents one of Warren's turning points in the traverse line through fractional section twenty-four.

Q. Where is that turning point located with reference to the topography of the land?

A. It is located in high ground.

Q. Now where does the line return to the lake?

A. At Angle point No. 7.

Q. How is that point situated with reference to the mean high water elevation?

A. Almost exactly on the 173.09 foot contour only slightly above in elevation and a negligible difference in horizontal distance which is immaterial.

Q. So that Warren's line begins at mean high water elevation and ascends over a bluff through the hills and then returns to the mean high water elevation at what point, angle point No. 7?

A. Yes, sir.

Q. State whether or not the well in controversy in this suit Gilber Special No. 1 is situated on the land in suit, Lot one of section Twenty-four?

A. The well involved in this suit, has been designated as 'Levee Board, Gulf Refining Company of Louisiana, that is shown in the south half of Lot one of Section twenty-four. The round circle about an eighth of an inch marks the well, and the mark indicates a producing oil well.

Q. Referring to Lot seven of Section Ten involved in the J. M. Walling suit, I will ask you to state whether the well in suit, being Marshall No. 4 is situated on that land?

A. Yes, sir, shown in the northern part of Lot No. 7.

Q. What have you to say in regard to the character of the land in Lot one of section twenty-five and lots

one and two of section thirty-six, involved in the suit of the United States vs. Mrs. Lesse N. Larobadiere.

A. The conditions in the vicinity of these lots is peculiar—the three lots described are all up land in character and are strictly hill land, that is to say, everywhere it is up land, sloping land and Warren's traverse line
153 runs across back through the hills and goes to the top of the slope and down into such tributaries and ravines as exist and ascends again into the opposite hills, detouring through the timber on the top part of the slope, without regard to the border of the lake, although he at starting out in section thirty-six, the first two meander courses actually follows the border of Ferry Lake. At Angle point No. 2 the traverse departs from the border of Ferry Lake and ascends into the hill land and traverses hill land reaching an elevation of thirty-seven feet above the lake level, twisting and turning regardless of topographical features of any character that justified any turning—On his course from Angle point No. 6, running in a northwesterly direction Warren decends from the top of the hill to the foot of the bluff, actually crossing the border of Ferry Lake at the position marked on the Supplemental Topographic Plat as Angle Point No. 13. That land in Lot one of section twenty-five and lots one and two of section thirty-six, is mostly heavily timbered, timber of great age. There are some little garden spots on these tracts, the timber having been removed somewhat in places, but there is abundant evidence of the virgin forest.

Q. These lots are situated near Mooringsport?

A. Yes, sir.

Q. What have you to say in regard to the first courses of the Warren meander line segregating this land from the land surveyed, by a view of sighting along that course?

A. At angle point No. 2, we set up the instrument

at Warren's angle point and we were exactly on the 173.09 foot contour, but in turning off the angle called for in Warren's field notes, sighting through the instrument it is to the top of the hill through heavy timber very sharp slope running from angle point No. 2 to Angle point No. 3 and measuring out that distance I noted an ascent of seventeen feet, at the end of the course angle point 3 brought us well up towards the top of the hill and I could not see any reason why he should stop his course at that place where he stopped, where his field notes called for the ending of the course.

Q. You retraced the meander line back to the Lake?

A. We continued from Angle Point No. 3 to Angle point No. 4, and run according to the bearings
154 given in the Warren field notes and measured out the distance called for, but there was not any place between Angle point No. 3 and Angle point No. 4, where we were anywhere near the border of Ferry Lake, back in the high hill, often crossing the tributary ravines in this course. We continued from Angle point No. 4 to angle point No. 5, and all along that course we were twenty-seven feet above the lake level. From angle point No. 5 to Angle point No. 6 we were at the same elevation above the lake level. Running Northwest from Angle point six we returned to the border of Ferry Lake.

Q. What do you say in regard to the correctness or incorrectness of that so called meander line?

A. Between angle points two and angle point 13 absolutely incorrect, does not conform in anyway to a meander line.

Q. Is that the portion of the meander line that resulted in the exclusion of the land involved in this suit?

A. Yes, sir.

Q. Does it follow the contour?

A. No, sir.
Q. Does it parallel the contour?
A. No, sir.
Q. Is it run without regard to the contour?
A. It is.
Q. Run over high hills?
A. Yes, sir.
Q. What is the area of land involved in these lots?
A. 22.71 acres.
Q. What is the area of Lot one of Section Three involved in the suit of the United States vs. Charles W. Lane, et al?
A. 5.67 acres representing the part of the land omitted by Warren at that place.
Q. Any other land in section Three omitted by the Warren survey, if so, what lots?
A. The other land omitted by Warren in his survey is lot two of section Three containing 2.71 acres and lot three of section three containing 9.5 acres making a total of 17.43 acres in section three omitted from the Warren survey.

155 Q. I will ask you whether or not all of lots one and two of section three are one solid body of land?

A. They are. They constitute a triangular area lying outside of the Warren meander line, in one body.
Q. Is the well in the suit of United States vs. Charles W. Lane, et al, situated on the land in controversy?
A. Yes, sir, that well is located on lot one of section twenty five shown on Supplemental Plat marked Plaintiff "F" in suit No. 1153, shown by the small round mark with a straight line through it, indicating according to the legend, an abandoned oil well in the northeast part of lot one of section twenty-five.

On cross examination he said:

By Mr. Herold:

Q. Mr. Kidder, what were the circumstances, or what was the cause of the original investigation of Township Twenty North of Range Sixteen West, Louisiana meridian?

A. There was a case before the Interior Department known as the application of certain mineral locators for certificates within the bed of Ferry Lake, looking to the forming of plats and descriptions of the area which would facilitate the matter and include all land in the bed of Ferry Lake as Mineral Land in the United States and public land and open to entry under the mineral laws.

Q. That is to say that you made your original investigation of the Warren meander line in connection with a different case than the class of cases here on trial?

A. Yes, sir.

Q. You were a number of months at work in Township Twenty North of Range Sixteen West, in connection with this other case before you were instructed to make a supplemental survey, or extension survey?

A. Yes, sir, our work was a little more than six months in the field.

Q. Now, in making your examination in connection with what is known as the Ferry Lake case, that is to say the matter of the application of various mineral locators, to which you have referred to made a report, did you not to the Commissioner of the General Land Office, relative to your examination of these surveys?

A. Yes, sir.

156 Q. In your report, Mr. Kidder, a copy of which I hold in my hand you made the following statement, which I will read to you "with only one exception the original section lines as termi-

nated upon the border of Ferry Lake show a proper recognition of the mean high water elevation of the raft period. I would not criticize the surveyors' judgment in the location of but one meander corner in the entire township and the meander lines along the lake front in sections 1, 5, 8, 11, 17, 20, 26, 28, 31, 33 and 35 are reasonably correct.

The faithfullness of the early surveyors deputized by the United States to the performance of the great trust of establishing and marking for all time the lines defining the rights of her land patentees has been well demonstrated by the positive identification and recovery of the original lines after a period far beyond the span of the average human life. The deputy surveyors were called upon to explore and map a wild and remote virgin forest and swamp, to transport themselves and equipment by primitive methods, and to subsist themselves largely by hunting and fishing as best they could." Is that a correct extract from your report?

A. Yes, sir.

Q. Now the Warren survey was made in 1839?

A. Yes, sir.

Q. At a time ante dating the settlement of this part of the country?

A. Yes, sir.

Q. As stated in your report, Warren and his assistants were compelled to transport themselves into a new and unsettled country and to subsist as best they could?

A. That is very true.

Q. At that time, Mr. Kidder, is it not a fact, from your investigation that the land that you claim was omitted from the Warren survey was of little or no value?

A Yes, sir, that would be my judgment.

Q. The work of these surveyors in general features, as you stated in your report was faithfully and well done?

A. Yes, sir, and that is brought out especi-
157 ally with reference to the section lines.

Q. Furthermore, Mr. Kidder, is it not a fact, that with a remarkable degree of accuracy Warren has located all of his meander posts on or close to the contour line established by you of 173.09?

A. Yes, sir.

Q. So that with respect to the Township and Range lines, the section line, corners and all meander posts, the Warren survey, is considering the conditions under which the survey was made, is remarkable accurate?

A. Yes, sir.

Q. Mr. Kidder, I will ask you to examine the Warren Plat of survey heretofore filed in evidence by the Government and to state whether or not that plat shows any meander line whatever, or whether it does not show the land as bounded by Ferry Lake?

A. The plat represents the land surveyed by Warren, and indicates the border of Ferry Lake, as represented in his field notes.

Q. Does the plat show, Mr. Kidder, any meander line or traverse line?

A. There is no indication of the border of the lake, no word or expression stating specifically it is a meander line, however the certificate on the plat, represents the western boundary of the section lines and traverses as surveyed by A. W. Warren, Deputy Surveyor. The sections are shown as fractional in area and border the lake and are shown as fractional, and the conditions of the land as actually surveyed by Warren.

Q. But the direct question I asked you—meander lines are lines are they not?

A. Yes, sir, meander lines are lines.

Q. Does this plat show the tracts in controversy on Ferry Lake bounded by any straight line, don't they go

from angle point to angle point and show the boundary of Ferry Lake, on the plat itself?

A. That is a matter of drafting particularly. There is no doubt in my mind whatever—I have checked the plat and scaled off the Warren courses and distances and the turning points follow in a general way the line represented as the border of the lake. The meander line as delineated on the plat might be referred to as a rather smooth curve connecting to the angle points on
158 the Warren line.

Q. What is the difference between a traverse and a meander line.

A. They are two different lines.

Q. Is such a line the line run between two points, the shortest distance between the bend or curve?

A. We do not consider it safe, as to use the term traverse and meander line, in running as the shortest distance between two points. If a traverse line is the shortest distance between two points it is not a traverse or meander line, it is the shortest distance between the two points and not a meander line.

Q. This particular plat shows a curved line in front of the various tracts bordering on Ferry Lake?

A. Yes, sir.

Q. Mr. Kidder, you made some reference in your testimony on direct examination to the Bristol survey—the Bristol survey was made in 1871, of land omitted from the A. W. Warren survey?

A. Yes, sir.

Q. That is the same Bristol survey referred to in the case of the Producers Oil Company vs. Miss Lydia Hanszen?

A. Yes, sir, the same survey.

Q. Coming down to the particular case before the Court, referring now to the land embraced in the case of

United States vs. Charles W. Lane, lot one of section three, where is that well located, Mr. Kidder, with reference to the subdivision of the section, if it were a whole section?

A. That well is located on lot one of Section three, which, if the section were complete in full, would be within the northwest quarter of the southwest quarter of section three.

Q. Now, Mr. Kidder, is it not a fact, that from the data testified to by you on your direct examination, that there is included in the Warren survey of Section Three, and particularly in the southwest quarter of section three a large area of lake land in the bed of the lake, or a larger area than the tract of land which you call lots one and two?

A. Yes, sir, in the fractional southwest quarter of section three crosses an embayment of James Bayou, the area of which is 10.9 acres and that is within
159 the fractional southwest quarter of section three as surveyed by Warren, that is to the east of his traverse line?

Q. Whereas lots one and two of section three, as shown on your survey contains what?

A. 8.38 acres.

Q. Mr. Kidder, taking the front of section three as surveyed by Warren, where did he set his first post?

A. Warren set the post on the southern boundary of fractional section three?

Q. Southern boundary of fractional section three?

A. Yes, sir.

Q. At what elevation?

A. On an elevation very close to 173.09.

Q. Now, take point 5 on your resurvey plat, which marks the extension of the half section line or line that

is intersected by the lake, is not that located also approximately on the 173.09 foot contour?

A. Yes, sir

Q. Now take the intersection of the meander line with the northern line of the section, is not that point as established by Warren also established approximately on the 173.09 foot contour?

A. Yes, sir.

Q. Those points were all monumented by Warren?

A. Warren monumented the points on the south and northern boundary of fractional section three, but he did not monument the intersecting point.

Q. That is the intersection of the half section line with the border of Ferry Lake?

A. Approximately in that position, don't mark the exact position.

Q. Now, Mr. Kidder, refer to section ten, with particular reference to what you show as lot seven, as I understand your testimony, the first meander post set by Warren was at the terminus of the line dividing sections ten and eleven?

A. Yes, sir.

Q. He also set the meander corners?

A. Yes, sir.

Q. That post was approximately on the 173.09
160 foot contour?

A. It was actually on the border at that place.

Q. Mr. Kidder, is it not a fact that the meander corner, point No. 18 on your resurvey plat, is also on or about the elevation of 173.09?

A. Yes, sir.

Q. In section thirteen, Mr. Kidder, is it not a fact that at the meander corner marked No. 7 on the resur-

vey plat, which is the point at which you stated in your direct examination Warren departed from the lake shore, the meander corner is on or about the elevation of 173.09?

A. Yes, sir, but I have been particular to refer to that as angle point, not what we term a meander corner. That was one point established by Warren for a meander corner or a turning point in his meander line.

Q. That is on or about the elevation of 173.09?

A. Yes, sir, very close to it.

Q. At the angle point No. 4 shown on the resurvey plat, is it not a fact that this point as established by Warren is on or about the 173.09 foot contour?

A. Yes, sir, that point is at an elevation very close to the 173.09 foot contour.

Q. In fact referring to your resurvey plat the dotted line represents the 173.09 foot contour?

A. Yes, sir.

Q. And the heavy line, the meander line of Warren as retraced by you?

Q. So at these crossings of the two lines the correspondence as between the two can be easily determined from the map itself?

A. Yes, sir.

Q. Mr. Kidder, is it not a fact that the same thing is true at point 5 of section twenty-four, as shown on the resurvey plat, and point seven of section twenty-four, they are approximately on the elevation of 173.09?

A. Yes, sir.

Q. And referring now, Mr. Kidder, to sections twenty-five and thirty-six, is it not a fact also that the
161 points on and two shown on the resurvey plat, are also approximately on the elevation of 173.09?

A. Those points are both very close to the contour 173.09.

Q. And that the Warren meander line again corresponds to the 173.09 foot contour a short distance northwest of point 6?

A. Yes, sir, crosses the 173.09 foot contour at the point shown as angle point 13 shown on the supplemental topographic plat of section twenty-five.

Q. Mr. Kidder, is it not a fact also that at the point where the northern line of section twenty-four intersects the lake border of the lake on the Warren survey, at the meander corner on the northern line of section twenty-four, that Warren ran at an elevation of approximately 173.09?

A. Yes, sir, the ground elevation at the meander corner, turns exactly on the 173.09 foot contour.

Q. And his meander corner marked on the resurvey plat No. 1 he was again at the elevation of 173.09, angle point No. 1?

A. Yes, sir.

Q. So that if Warren had simply projected the line between angle point No. 1 and the meander line on the northern line of section he would have run just such a line as he denotes as a meander line in front of section twenty-four, would he not?

A. Well, that is a straight line between the meander corner on the northern boundary of section twenty-four and angle point one, and is the directions and length called for in the field notes connecting those two points?

Q. It is a straight line connecting those two points, on the courses and at the distances stated in the Warren field notes?

A. Yes, sir.

Q. Is it not a fact from all the evidence, from what Warren did was that he was simply projecting the line

between those two points, which were correctly established at the proper elevation?

A. Yes, sir, that conclusion is inevitable from the field notes recorded of the Warren survey.

Q. You find, Mr. Kidder, do you not, that Warren's calls, courses and distances are correct, generally?

A. That is a big question. Where we were
162 able to retrace the section lines we found the agreement as close as we could expect to find in that old class of work, with the instruments that they used, and in section twenty-six for example, his meander line was as close as we could run it ourselves.

Q. What instruments used?

A. Needle, compass, open sight instrument without telescope, and link chain.

Q. Mr. Kidder, with reference to section thirteen, is it not evident that what Warren did, was merely to cut the point instead of running around it, in the manner in which surveyors in those days did, merely cut across the point?

A. That inference might be drawn with respect to the Southern part of lot one of section thirteen, but the northern part of lot one of section thirteen will not bear out that sort of inference.

Q. Now, in the northern part of lot one of section thirteen, as shown as such on your survey, there is an area of flat land?

A. No, sir; not an area of land but it is sloping land, with a very perceptible slope running up seventeen feet above the lake level.

Q. What is the area embraced in your so called northern portion of lot one of section thirteen?

A. About seven acres.

Q. What is the area embraced in the peninsular, the southern half?

A. About twenty-one acres in the southern end.

Q. Now, that constitutes a peninsular jutting out?

A. It might be termed that. I would call it a hill projecting out into the border of Ferry Lake.

Q. A projection of that kind in ordinary language is called a peninsular?

A. It might be, if you consider the shape of it, but I would like to call attention to the fact that that hill is bordered on the north by the tributary of Ferry Lake, and the configuration of the hill is a result of that tributary, the location of the tributary at that place is not the result of the actual embayment of the lake itself.

Q. This tributary, to which you refer, separates what you style the northern and southern portions of lot one?

A. Yes, sir.

163 Q. Now, the tongue of land, constituting the southern portion of lot one, is divided according to your contention from section thirteen as surveyed by Warren by the Warren meander line from angle point seven to angle point four?

A. That portion of the Warren meander line from angle point No. 7 to angle point No. 4, segregates the southern part of lot one of section thirteen from the fractional northeast quarter of section thirteen, and is what may be termed the common dividing line between the land included in the Warren survey and that excluded.

Q. Angle points four and seven are approximately on the 173.09 foot contour?

A. Yes, sir.

Q. Mr. Kidder, referring to section three, or first, referring to section ten, if Warren had merely run a line between the meander corner on the section line dividing sections ten and eleven to angle point No. 18, he would have produced a line, approximating the line that you have run in this case, would he not?

A. Yes, sir, although the correction was not made to extend entirely through to the eastern boundary of section ten.

Q. You testified on direct examination, that there was a large quantity of land omitted in section ten, not only in the southeast quarter of the section, now, is it not a fact that the land to which you refer lies west of the surveyed land, shown as lot four of section ten?

A. Yes, sir.

Q. So that it does not form a portion of a contiguous tract to what you designate as lot seven of section ten?

A. No, sir. It is a part of the same body of land, but it is separated by Warren's fractional southwest quarter of section ten, which has been given lot No. 4.

Q. The Warren survey did not extend beyond the slough running through sections three and part of section ten, is that correct?

A. No, sir, that statement is not quite correct. There is a slough which represents the head of an arm of James Bayou in Lot No. 3 section ten, which drains in a northwesterly direction—Warren's traverse line of section ten crosses that slough at the last course—There is
164 another slough in section ten, which drains the central part of the west half of section ten, which is located in the fractional southwest quarter of section ten, as surveyed by Warren. Warren's traverse line between angle points Nos. 17 and 18 cross the embayment of Ferry Lake, which represents the outlet of this slough or drainage course into the open lake, and again between Warren's angle points five, six, seven, eight, nine, ten, and eleven Warren is virtually running around the upper slopes of that particular drain or basin and in a survey made in such a manner so as to include in the southwest fractional quarter this drainage basin.

Q. Mr. Kidder, the particular land to which you refer as having been omitted from the Warren survey, lying west of lot four of section ten, is not that essentially about the same character of land embraced in the same locality, as land surveyed by Bristol?

A. Yes, sir.

Q. And stated in the Bristol survey, as being what is known as Wilson's point?

A. Yes, sir.

Q. The history of that survey you read in the case of the Producers Oil Company vs. Lydia Hanszen, decided by the Supreme Court.

A. I am not prepared to say how fully the history of that survey has been gone into in that brief.

Q. How much land would be embraced in the Bristol survey and the land contiguous to the Bristol survey that was omitted by Warren?

A. 452.74 acres.

Q. That is to say, in the district there known as Pitts Point or Plum Point, there is 452 acres?

A. Yes, sir, excluded from the Warren survey, everything west of the Warren traverse line, through section ten.

Q. All of which should have been included in the Bristol survey?

A. Yes, sir, as I understand the special instructions under which the Bristol survey was executed, I would say all of it should have been included in the Bristol survey.

Q. Outside of this Pitts point country, the area which you contend was omitted from the Warren sur-
165 vey on the shore of Ferry Lake, embraces how many acres?

A. 69.56 acres.

Q. And Mr. Kidder, included in the Warren survey on the Northern shore of Ferry Lake is how many acres, which really constituted a part of the lake, not of the land?

A. Approximately forty-four acres.

On re-direct examination he said:

By Mr. Hunter:

Q. Mr. Kidder, you were asked on cross examination relative to the area omitted from the Warren survey and referred to in cross examination as the Pitts point or Wilson point, I will ask you to state whether or not, within the area mentioned by counsel, is that shown on the plat of survey, as having been surveyed by Bristol in 1871, and by yourself in 1917, lying in section ten, nine, three, four, fifteen and sixteen, forming one compact body of land?

A. Yes, sir, the area in the case, in making the computation at this point the official area was taken from the plat of survey.

Q. Mr. Kidder, I will ask you to state, without reference to the land lying in sections three, four, nine, ten, fifteeen and sixteen embraced in the Bristol survey and your survey, how much land was left out of the Warren survey in other portions of this Township?

A. 305.88 acres.

Q. Comprising what areas as shown on the plat?

A. Comprising lot one of section twelve, lot one of section thirteen; lot one of section twenty-four, lot one of section twenty-five; lots one and two of section thirty-six and lots one and two of section twenty-three; lots one, two and three of section twenty seven; lot five of section thirty-two; lot four of section thirty-two and the fractional southeast quarter of section thirty-one, the official areas being taken from the plat.

Q. The total area omitted throughout the entire township including that surveyed by Bristol and yourself, exceeded a thousand acres?

A. Yes, sir, it adds up 1047.67 acres, but that
166 total is arrived at by adding the areas taken from the official plats and includes 59.90 acres, being a narrow front along the Warren meander line, where no corrections were attempted.

Q. What is the acreage shown in the survey, where corrections were made?

A. 987.77 acres.

Q. You have been asked, Mr. Kidder, relative to certain areas in certain particular portions of this Township, which were returned by Warren as land, but which in reality were at the time of his survey water, I will ask you to state whether or not, in complying with the request made by one of the counsel for defendants you and Mr. Clements made a computation of a similar area throughout the entire township?

A. Yes, sir, we cooperated in making the computation of the area lying below the 173.09 foot contour, and between that contour and the Warren traverse line in these sections where the contour invades the area included in the Warren survey, and which was actual water surface at the time of the Warren survey, which was represented as land on the Warren plat and find sixty-five acres?

Q. Throughout the entire Township?

A. Yes, sir, throughout the entire Township.

Q. How does that compare with the amount of land, consisting of this strip of land which you mentioned, which you stated have not been included in your survey on account of the fact there was practically an agreement with the margin or shore of the Lake?

A. 59.90 acres.

Q. So that Warren left out of his meander line an area which has not been surveyed of about 59.90 acres, and you surveyed as land the area below the mean high water elevation sixty-five and a fraction acres that he included?

A. Yes, sir.

Q. In addition to that he left out of his survey up land throughout the entire Township, 987.77 acres?

A. Yes, sir.

Q. Mr.. Kidder, you were question on cross examination with regard to the report that you made—

167 I show you a certified copy of the general report of the execution of surveys of Township Twenty North, Range Sixteen West, Louisiana meridian and I will ask you to state whether or not this is a copy of the original report you made, and if so, to whom the report was made, and I will ask you to state whether this is the same as the one read from by counsel in his cross examination?

A. This is the report that was read from by counsel. The original bore my signature made under date of October 14th, 1914, to the Commissioner of the General Land Office, at Washington, D. C.

Counsel for Plaintiff offers in evidence the report identified by the witness.

Filed in evidence and marked exhibit "L."

The taking of evidence was discontinued until May 9th, 1918.

May 9th, 1918. all parties being present the taking of evidence in the above causes was resumed.

Counsel for Plaintiff offers in evidence in case No. 1153 the interrogatories and answers to interrogatories relating to the production of oil from the land in controversy and the value thereof, from Lot No. 1 of section three, said interrogatories and answers thereto being now on file in the record of said cause.

Also in the case of the United States vs. Gulf Refining Company, No. 1158, we offer the interrogatories propounded to the defendant relative to the production, and value of the oil taken from the land involved in that suit, said interrogatories and answers thereto being now on file in the record in said cause.

Also in the case of the United States vs. Southwestern Gas and Electrical Company, No. 1162, Counsel offers in evidence the interrogatories and answers thereto propounded to the defendant relative to the production and value of oil produced from the land in controversy, said interrogatories and answers thereto being
168 on file in the record in this case.

Counsel for Plaintiff also introduces in evidence the interrogatories and answers thereto, in the suit of the United States vs. J. M. Walling, No. 1163, relative to the production and value of oil produced from the land in controversy, the interrogatories and answers thereto being now on file in the record in this case.

Counsel for Plaintiff offers in evidence in the suit of the United States vs Mrs. Jesse Larobedierre, No. 1164, the interrogatories and answers thereto, relative to the production and value of the oil taken from the land in controversy, said interrogatories and answers thereto being now on file in the record in this case.

Counsel for Plaintiff states that they desire to restrict said offers to the answers given in response to the questions propounded, and moves to eliminate therefrom all answers of the defendants in regard to the cost of drilling and producing said wells, plaintiff not offering those portions of the answers to the interrogatories which relate to the cost of drilling and producing.

Counsel for Plaintiff further states that it reserves the right in the case of the United States vs. J. M. Walling, to show a larger production from the well in controversy than that shown by the answers to the interrogatories, and makes the same reservation in all of the suits.

To which counsel for the Gulf Refining Company of Louisiana, in case No. 1158, United States vs. Gulf Refining Company of Louisiana, et al, and case No. 1162, United States vs. Southwestern Gas and Electrical Company, suit No. 1163, United States vs. J. M. Walling, and suit No. 1164, United States vs. Mrs. Jesse N. LaRobediarre, objects on the ground and for the reason that the answers containing the cost of drilling, equipping and operating the wells constitutes an integral portion of the answer, necessarily responsive to Plaintiff's interrogatories, said interrogatories seeking to discover
169 the profits made by the defendants from the sale of oil from the wells in controversy, such profits necessarily being the difference between the price at which the oil was sold and its cost to the defendant, which cost is composed of the items of drilling the wells, equipping and operating the same.

This case objection to apply in all cases for all defendants.

By Master:

To be considered when I consider the case.

To which counsel for defendants except.

JAMES W. NEAL, a witness for the Plaintiff, being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Hunter:

Q. Mr. Neal, are you special agent of the General Land Office?

A. I am.

Q. I will call your attention to the case of the United States vs. Charles W. Lane, et al., No. 1153, being one of the consolidated cases now on trial and I will ask you to state whether or not, you at my request made an investigation of the records of the Producers Oil Company, and The Texas Company with regard to the production and value of oil taken from the well in controversy in this case?

A. I did, make such an investigation?

Q. State whether or not your investigation was made in Shreveport, Louisiana, and Houston, Texas?

A. My investigation was made in Shreveport and also in Houston, Texas.

Q. Have you jointly with the representatives of the defendant companies prepared a statement of the production and value of the oil taken from the Lane No. 3 situated on lot one of section 3, involved in this case?

A. Yes. sir.

Q. What does the statement show relative to the total production of the oil taken from the well in suit?

A. The statement shows the total production
170 of oil from Well No. 3 to December 31st, 1917, is 42735.23 barrels.

Q. On what value?

A. Of the value of $36,430.73.

Q. What does the statement show with reference to the royalty paid C. W. Lane from this well, including any amount that may be held in suspense by the Texas Company?

A. The statement shows the approximated royalty from this well to C. W. Lane, including the amount held in suspense by the Texas Company, being the amount due on royalties since the filing of this suit is $1,517.95.

Q. What does the statement show with reference to the amount of royalties paid to C. W. Lane.

Counsel for Defendant Lane objects as it tends to enlarge the pleadings, and makes the same objection as heretofore and same ruling and bill of exceptions.

Counsel for defendant agrees to furnish the data showing the amount of royalty paid by the Producers Oil Company to C. W. Lane and the Board of Commissioners of the Caddo Levee District on the oil abstracted from Well No. 3, being the well involved in this suit, together with the amount held in suspense due to each of said parties.

Q. What does the statement show, Mr. Neal, with reference to the royalties paid to the Board of Commissioners of the Caddo Levee District, from Well No. 3?

A. The statement shows the approximated amount of royalty paid to the Board of Commissioners of the Caddo Levee District from this well amounted to $4,553.84.

Q. Does the statement represent an estimated amount of the production of oil from this well?

A. The statement represents an estimation of the oil run from this well, while this well was operated in conjunction with other wells and on the same lease. The statement also shows the oil run from this well while it was run into a separate tank.

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Q. Are you satisfied with the estimate of the total production as shown by the statement referred to?

A. I am.

Q. Did you yourself make an estimate?

A. I did.

Q. Did you make that from the run tickets?

A. Yes, sir, made it from the run tickets.

Q. What representative or who was the representative of the defendant companies, the Producers Oil Company assisted you in making this estimate?

A. Mr. C. H. Blish.

Q. You and Mr. Blish agreed upon these items?

A. Yes, sir.

Q. What do the records of the Producers Oil Company show with reference to who drilled the well?

Counsel for Defendant admits that the well was drilled by the Producers Oil Company under contract, begun July 28th, 1911, and completed August 29th, 1911, and ceased producing December 4th, 1916, and the casing and other material was pulled therefrom after that date. That the oil from the land in controversy was taken into the pipe line of the Texas Company, and sold for the account of the Producers Oil Company, the Board of Commissioners of the Caddo Levee District and C. W. Lane, in proportion of their interest in said oil.

It is admitted that the oil produced upon the property in controversy was run into a common tank on the lease and was delivered from these tanks into the pipe line of

the Texas Oil Company, without reference to any designated well.

It is further admitted that all of the oil produced by the well known as Lane No. 3, situated on Lot one of section three was extracted from the land in controversy by the Producers Oil Company and sold and delivered by it to The Texas Company upon the land in suit, said delivery being made by pipe line, by running the same into a common tank, from which it was withdrawn by the Texas Company.

It is admitted by counsel for Plaintiff and Defendant that the total production of oil from the well in
172 suit was 42,735.23 barrels of the value of $36,430.73.

On cross examination he said:

By Mr. Storey:

Q. Did you examine the statement field with the answer of the Producers Oil Company, of the drilling of Well Number three?

A. I did.

Q. Was this statement satisfactory to you, Mr. Neal?

A. They are. I believe them to be correct.

Q. The cost of drilling that well was $8,733.25, the cost of operating the well was $8,383.50, making a total of $17,116.75, is that correct?

A. That statement is correct.

Q. Were you given credit for the salvage on this well?

Q. What did that amount to?

A. $1,069.20.

Q. Deducting the cost of drilling the well and cost of operating from the total value of the oil, what does it leave as the balance—there was $36,430.73 the value of

the oil produced, the cost of drilling and operating the well amounted to $17,116.75, less a credit of $1,069.20 for salvage which will leave the cost of drilling and operating $16,047.50, now the difference between the cost of drilling the well and cost of operating and the total value of the oil will be $14,311.74?

A. No, the difference between—the total value of the oil run from the lease was $36,430.73 and the total amount charged to the account of drilling and operating the well was $16,047.50 which leaves $20,383.23. The Producers Oil Company received of the oil run from the well, from the producing interest of the value of $14,311.74.

Q. Then if I understand this statement, you do not charge the cost against the royalty at all?

A. No, sir, not in this statement.

Q. You are satisfied that is a correct statement, satisfactory to you?

A. Yes, sir.

173 Counsel for Defendants offers the statement referred to in evidence.

Filed in evidence and marked Producers Oil Co. Ex. No. 1.

On re-direct examination he said:

By Mr. Hunter:

Q. Mr. Neal, I will ask you to state whether or not the statement offered in evidence and marked exhibit No. 1, shows that all of the oil was produced by the Producers Oil Company from this land?

A. The statement don't show that upon the face of the record, but the records of the Producers Oil Company show that the Company produced all of the oil from the tract, from the Well known as Lane No. 3.

Q. And the Producers Oil Company sold all of the oil to the Texas Company?

A. Their records so show.

Q. What is the difference between the total production of oil by the Producers Oil Company, as shown on the statement to be $36,430.73 and the amount claimed by the Producers Oil Company for drilling and operating the well?

A. The difference between the total value of the oil and the counter-claim, is $20,383.23.

It is admitted that the well known as Levee Board Fee No. 10 was drilled on the land in controversy in the suit of the United States vs. Gulf Refining Company of Louisiana, and that the total production of the well was received by the Gulf Refining Company of Louisiana, for its own account.

Q. Mr. Neal, did you, at my request, make an examination of the records of the Gulf Refining Company of Louisiana, relative to the production and value of the oil taken by it from the land involved in this case?

A. Yes, sir.

Q. State whether or not you were furnished by the Gulf Refining Company of Louisiana, access to its records and were you allowed to examine their records?

174 A. I was furnished copies of the statements from the books and also permitted to examine their records.

Q. Have you a statement of the production of this well?

A. I have.

Q. What was the total production as shown by the statement?

A. The total production from the well known as Levee Board Fee No. 10 was 4402.16 barrels.

Q. No royalty was paid in that case?

A. No, sir.

Q. What is the value of the production as shown by the statement?

A. The total value of the production is $6546.40.

Q. From your examination of the statement furnished you by the Gulf Refining Company of Louisiana, and from your examination of its records, is this statement, the amounts of which you have just mentioned in your testimony, in your opinion correct?

A. It is.

Q. This statement shows the extent of the production and the value, or is that an estimate?

A. It shows the actual production, shows the actual production of the well in question as shown by the run tickets and the values being the posted values shown on the days of the runs.

On cross examination he said:

By Mr. Herold:

Q. Mr. Neal, in connection with your investigation of the production of the oil from this property, did you investigate as to the cost of drilling, equipping and operating this well?

A. Yes, sir.

Q. The statement I hold in my hand, shows the cost of drilling and equipping the well as $6536.13 and the total operating expenses to December 31st, 1917, of $3,654.87, making a total outlay of $10,191.00?

A. Yes, sir.

Q. Are you satisfied that those figures are correct?

A. I am.

Q. Representing the actual cost of drilling, equipping and operating the well to December 31st, 1917?

A. I am.

Counsel for defendant offers the statement referred to in evidence.

175 Filed in Evidence and marked Gulf Refining Company No. 1.

On re-direct examination he said:

By Mr. Hunter:

Q. Mr. Neal referring now to the case No. 1162, United States vs. Southwestern Gas and Electric Company, I will ask you to state whether or not you made any examination of the statements and records of the Gulf Refining Company of Louisiana, relative to the production and value of the oil taken from the land in controversy in that case?

A. I have made such an examination.

Q. State whether or not the Gulf Refining Company of Louisiana furnished you a statement showing the production and value of the oil taken from the land involved in this suit?

A. They did.

Q. Have you the statement in your possession?

A. I have.

Q. What does this statement show, with respect to the production and value of the oil?

A. The statement shows that from March, 1911, to December 31st, 1917, there was extracted from the well in controversy, under the name of Gilbert Special No. 1, a total of 32,034.87 barrels of oil of the total value of 29,946.04.

Q. I will ask you to state whether or not, the statement that you have in your hand, shows any pipe line earnings of the Gulf Refining Company of Louisiana, on this oil and if so please state the amount?

A. The statement shows pipe line earnings on the 32,034.86 barrels of oil at ten cents per barrel $3,203.48. This was the amount allowed to the Pipe line Company for running the oil from the land to the Gulf Refining Company's receiving tanks.

Q. Mr. Neal, what do the records show with reference to the date of the drilling of the well in suit?

A. The records show that the well was begun January 18th, 1911, and completed March 11th, 1911, being brought in as a producing well.

Q. By whom was the well drilled, according to the records and the statement?

A. By the Gulf Refining Company of Louisiana.

176 It is admitted that the well referred to by the witness was drilled upon the property in controversy by the Gulf Refining Company of Louisiana.

Q. What does the statement show now with reference to the payment of royalties by the Gulf Refining Company of Louisiana?

A. It shows that.

Q. What does it show in that respect?

A. It shows that the Caddo Oil and Gas Company received 1412.85 barrels of oil of the value of $933.30; that the Southwestern Gas and Electric Company received 2,590.19 barrels of oil of the value of $3,747.99. That the Gulf Refining Company of Louisiana received as its part 28,031.82 barrels of oil of the value of $29,264.75.

Q. What does the statement show in connection with the records with respect to whether or not the Gulf Refining Company of Louisiana produced all of the oil shown by the statement that you now have, and paid the royalty to the Caddo Gas and Oil Company and the Southwestern Gas and Electric Company, out of said total production?

A. The books of the Gulf Refining Company of Louisiana show that it received the oil and paid the royalty according to the value of the oil on the dates of the runs to the purchasers as named.

Q. And the amounts as named?

A. Yes, sir, in the amounts as named.

On cross examination he said:

By Mr. Herold:

Q. Mr. Neal, is it not a fact that the records of the Gulf Refining Company of Louisiana show that it purchased the royalty oil from the other parties. In other words, is it not a fact that the royalty was payable in kind and not in money and the Gulf Refining Company of Louisiana purchased the royalty oil?

A. The books of the Gulf Refining Company show an accounting with each of the royalty claimants, their
177 portion of the oil being credited in said account and the values being shown—the books indicate that each of the royalty claimants were paid their part of the royalty. I did not examine the vouchers to determine who paid them.

Q. Mr. Neal, in connection with this investigation of the production from the property in controversy in this case, did you make an investigation as to the cost of drilling, equipping and operating the well in controversy?

A. I did.

Q. What was the total cost of drilling the well?

A. The total cost of drilling and equipping the well was $8,791.95.

Q. What was the cost of operating the well up to December 31st, 1917?

A. Operating the well to December 31st, 1917, shows a cost of $11,572.89.

Q. Making a total cost of expenditures to the Gulf Refining Company of Louisiana of how much?

A. $20,364.84.

Q. You are satisfied that is correct?

A. I am.

Q. All of these figures are set out in the statement that you hold in your hand?

A. Yes, sir.

Counsel for Defendant offers the statement referred to in evidence in suit No. 1162, same being filed and marked Gulf Refining Company No. 2.

On re-direct examination he said:

By Mr. Hunter:

Q. Mr. Neal, what is the total amount of the cost of drilling, equipping and operating this well as shown by the statement?

A. 20,364.84.

Q. What is the difference between that amount and the total production as shown by the statement marked Defendant No. 2?

A. The difference between that amount and the total value of the oil received by the Gulf Refining Company of Louisiana is $12,784.68, as shown by the statement.

178 Q. Now, Mr. Neal, referring to the case of the United States vs. Mrs. Jesse N. LaRobadiere, et al., No. 1164, I will ask you to state whether or not you make an examination of the records of the Gulf Refining Company of Louisiana, relative to the production and value of the oil taken by it from the land involved in this suit?

A. I made such an investigation.

Q. Did the Gulf Refining Company of Louisiana furnish you a statement showing the production and value of the oil taken from the land in suit?

A. It did.

Q. Have you that statement now before you?

A. I have.

Q. What does the statement show relative to the production and value of the oil taken from the land in suit?

A. The statement shows that from August, 1913, to November, 1915, a total of 8,839.00 barrels of oil was produced by the Hostetter Fee No. 2, being the well involved in this suit, and that the value of the oil figured at the price of oil on the dates the runs were made was $8,200.60.

Q. Does the statement show anything with reference to the payment of royalties by the Gulf Refining Company of Louisiana, and if so, state what it shows with reference to the payments?

A. The statement shows that Mrs. J. A. LaRobadiere received 3-8th of the oil run off of the lease 3,314.63 barrels of the value of $3,075.21.

Q. State what else the statement shows?

A. The statement also shows that the Gulf Refining Company retained one-half of the oil run from the well or 4,419.50 barrels of the value of 94,100.32, and that Blanchard, Barrett & Smith received 1-8th being 1,104.87 barrels of oil of the value of $1,025.07.

It is admitted that the well involved in this suit was drilled by the Gulf Refining Company of Louisiana, on the land in controversy and that it received and disposed of for its own account all of the oil produced from said well.

179 On cross examination he said:

By Mr. Herold:

Q. Mr. Neal, in connection with your investigation of the production of this well, did you investigate the

cost to the Gulf Refining Company of Louisiana, of drilling, equipping and operating the well?

A. I did.

Q. Will you please state what the cost of drilling and equipping the well was?

A. The cost of drilling and equipping the Hostetter well was $7,344.60.

Q. What was the cost of operating the well up to December 31st, 1917?

A. $5,426.65.

Q. You are satisfied, as the representative of the Government, with the correctness of those figures?

A. I am.

Q. That makes the total cost to the Gulf Refining Company of Louisiana of that well of how much?

A. $12,771.25.

Counsel for Defendants offers the statement referred to in evidence in suit No. 1164, Gulf Refining Company Exhibit No. 3.

Filed in Evidence and marked exhibit No. 3.

By Mr. Hunter:

Q. Mr. Neal, referring to the case of the United States vs. J. M. Walling, No. 1163, involving Lot No. 7 of section 10 I will ask you to state whether or not you made an examination of the records of the Gulf Refining Company of Louisiana with regard to the production from that land?

A. I have.

Q. State whether or not you were able to determine from the records of the Company the approximate production of the well known as the Marshall No. 4, involved in this suit?

A. I was not.

Q. Why were you not?

A. Because the wells on the entire lease, Marshall Nos. 1 to five were operated together and the oil run into one set of tanks and the records of the Company shows the total oil from all five wells, and I have not found anything in the record on which to make an estimate of the production from Marshall No. 4.

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Q. I will ask you to state whether or not you have examined the answers to the interrogatories filed herein of the Gulf Refining Company, with regard to this production from Well No. 4?

A. I have.

Q. State whether or not the Gulf Refining Company of Louisiana furnished to you a statement showing the estimate of the production from Well No. 4?

A. They furnished me such a statement?

Q. Have you examined that statement?

A. I have.

Q. State whether or not, in your opinion the estimate made by the Gulf Refining Company of Louisiana, as shown by the answers to the interrogatories, shown by the statement of such estimate is such as to enable you to arrive at any conclusion in regard to the correctness of that estimate?

A. It is not of such a nature that I can arrive at the correctness of the statement.

Q. Upon what records that have been submitted to you, if any, is the estimate of the Gulf Refining Company of Louisiana based?

A. The estimate, as disclosed by my investigation as made by Mr. Buckhana, of the Company in Shreveport and I have been unable to get a satisfactory explanation as to how the estimate was made and upon what it is based.

Q. Has the Gulf Refining Company of Louisiana, or any of its agents or representatives furnished you any record or any data showing the correctness of the estimate made by them in their answer to the interrogatories and in the statement referred to?

A. They have not.

Q. Have you called upon any of the representatives of the Gulf Refining Company of Louisiana, for such records?

A. I have.

Q. Upon whom did you make such a demand?

A. Upon Mr. Herold, the Attorney for the Gulf Refining Company of Louisiana and Mr. W. B. Pyron, Vice President of the Company. Also I made request for such information from parties or Clerks making a statement from the books.

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Q. Was such information furnished upon that request?

A. No, sir.

Q. From your examination of the records of the Gulf Refining Company of Louisiana, I will ask you to state whether or not there are any records showing the exact production of well No. 4, the well involved in this suit?

A. There are no records showing the exact production of Well No. 4. There is an estimated statement showing an estimate as made by the company.

Q. In your opinion, is the estimate as submitted correct?

A. In my opinion the estimate submitted is not correct.

Q. In your opinion is the estimate based upon any data that would enable a person making an estimate to make a reasonable conclusion as to the production of the well in suit?

A. In my opinion it is not based upon any data that would enable anyone to make an accurate estimate.

Q. I will ask you to examine the statement marked Plaintiff "M" and to say who furnished you that statement?

A. This statement was furnished me by the Gulf Refining Company of Louisiana, after I had checked the accounts and prices of the records of the Company at Houston, Texas.

Q. What does the statement show with reference to the total production from the Marshall lease?

A. The statement shows the total production of oil from January, 1912, when the drilling in of well No. 4, to December 31st, 1917, is 407,366.69 barrels, of the value of $386,393.95.

Q. Who gave you this statement, Mr. Neal?

A. I have a letter enclosing that statement from Mr. L. E. Delcuse, Auditor of the Gulf Refining Company of Louisiana.

Q. Now, from your examination of this matter, did you ascertain that the well in suit, Marshall No. 4 has been operated in connection with wells shown on the statement Nos. 1 to 5?

A. Yes, sir, the records of the Gulf Refining Company of Louisiana show that wells one to five on the Marshall lease have been pumped into the same retaining
182 tanks. This is shown by the run tickets furnished me by the Company, by the pipe line Company.

Q. In other words the oil produced by the well in this suit was mingled with other oil produced from wells not in suit?

A. It was.

Q. Put in a common tank?

A. Yes, sir.

Q. The other wells referred to are not situated on the land in controversy?

A. They are not.

Counsel for Plaintiff offers in Evidence the statement identified by the witness marked Plaintiff "M".

Filed in Evidence and marked Plaintiff "M".

It is admitted by Counsel for Defendants that the well known as Marshall No. 4 was drilled on the land herein in controversy by the Gulf Refining Company of Louisiana and the crude Oil Company jointly, the Gulf Refining Company of Louisiana owing 47 1-2 and the Crude Oil Company 52 1-2 per cent interest therein. That the drilling of said well was begun December 1st, 1911 and same was completed January 31st, 1912.

It is further admitted that during the term of the operation of the well and before the sale of the same by the Crude Oil Company to the Gulf Refining Company of Louisiana, the Crude Oil Company's portion of the oil was purchased each month by the Gulf Refining Company of Louisiana and settlement made accordingly. The Gulf Refining Company thereby receiving either as producer or purchaser all of the oil produced by said well, and that since the sale by the Crude Oil Company to the Gulf Refining Company of Louisiana, as evidenced by a deed which will be offered in Evidence the Gulf Refining Company of Louisiana, has been handling for its own account and for the Royalty owners the entire production of the well.

On Cross Examination he said:—

By Mr. Herold:—

Q. Mr. Neal, you are satisfied with the correctness of the production statement from the entire Mar-
183 shall lease, from wells Nos. One to Five, inclusive?

A. I am.

Q. In the course of your examination did you investigate the question of the cost of the well?

A. I did.

Q. Will you please state what the cost of drilling and equipping the Marshall well No. 4 was?

A. The cost of drilling and equipping the Marshall Well No. 4 was $11,331.64.

Q. What was the cost of operating the well up to December 3rd, 1917?

A. The cost of operating the well to December 31st, 1917 from the time it began producing was $9,311.19.

Q. Making a total cost of what?

A. $20,643.19.

Q. You are satisfied those figures represent correctly and truly the cost of drilling, equipping and operating this well?

A. I am.

Q. Mr. Neal, in the course of your examination of the Marshall No. 4 well, did you ascertain the proportion in which the oil was divided between the various parties interested in the well?

A. I looked over the records at the time that I made the investigation, but I do not now remember the percentage which each of the royalty claimants received, of the production.

Q. Mr. Neal, in the course of your investigation, did you have occasion to look into the initial production of each of these wells?

A. No, sir, I did not, I was informed that the Gulf Refining Company of Louisiana kept a record of the production of each well for twenty four hours during each month, since the drilling in of the well, but I have never been able to get that record on well No. 4.

Q. Has there been any disposition on the part of any of the officers or agents of the Gulf Refining Company of Louisiana to withhold from you any information in their possession?

A. There has been no disposition to withhold any information from me, however, Mr. Delcuse complained that he had given me all the information on the trip I made to Houston.

Q. He gave you the information?

184 A. Yes sir, after we went and talked to the Attorneys he did.

Q. You went to Houston, Texas, with a letter from Thigpen and Herold, as Attorneys for the Gulf Refining Company of Louisiana, with the request that any information in the possession of the officers be furnished you?

A. Yes, sir.

Q. And the Attorneys for the Company in Houston, Texas, gave you the same instructions to the officials there?

A. They did.

Q. Have you discussed the matter of ascertaining the exact production of the Marshall No. 4 with Mr. Pyron who was in charge of the Gulf Refining Company of Louisiana, in this territory during the period in controversy?

A. I have discussed the estimate with Mr. Pyron, but I have no knowledge he was in charge of the operations.

Q. What did Mr. Pyron say to with as to the method of ascertaining the production of this well?

A. Mr. Pyron stated that it was an estimate, but as to the exact way in which the estimate was made and upon what data the estimate was made Mr. Pyron has never explained to me.

Q. Mr. Pyron knew nothing about the monthly gauges on this well?

A. My understanding is that Mr. Pyron knows there is such a gauge.

Q. Kept for how long?

A. I do not understand your question?

Q. From information furnished you by Mr. Pyron, how long are those records of the separate gauges retained?

A. I was informed by Mr. Pyron yesterday evening that the gauge as kept of each well were destroyed each month.

Q. All of these five wells Mr. Neal were drilled by the Gulf Refining Company of Louisiana on the Marshall lease?

A. That is my understanding.

Q. The five were operated together?

A. Yes sir, wells one to five.

(At this point the Plaintiff reserves the right to put on further evidence on the question of production and value of the oil produced from this land, and on June 11th, 1918, produced the following Evidence.

185 JAMES W. NEAL, a witness for Plaintiff being recalled, testified as follows:—

On Direct Examination he said:—

By Mr. Hunter:—

Counsel for Plaintiff now offers in evidence the petition and order, as well as the additional interrogatories addressed to the Gulf Refining Company of Louisiana, in this case together with the answers of said Company to said interrogatories.

Q. Mr. Neal, you have already testified in this case, and I wish to ask you whether or not you have made an

estimate of the production of the well involved in this suit, being Marshall No. 4?

A. I have.

Q. Have you prepared a statement showing the estimated production from that well?

A. Yes, sir.

Q. From what data was the estimate prepared?

A. The statement was prepared from the pipe line runs from the five wells known as Marshalls Nos. 1 to five, which were operated into a single set of tanks together and the value of the oil was taken from the list price of oil on the day that the several runs were made.

Q. I notice on your statement you have total oil run as 407,360.69 barrels of the value of $386,393.14, from whom did you obtain those figures?

A. From the Gulf Refining Company of Louisiana. Those figures are the same in the totals as the itemized statement already filed in evidence in this case.

Q. That itemized statement was furnished you by the Gulf Refining Company of Louisiana?

A. It was.

Q. Were wells Nos. 1, 2, 3, 4, & 5 run into one common tank?

A. They were.

Q. Was any separate record kept of the production of any of those wells?

A. The pipe line runs shows that all of the
186 , wells were operated into a series of tanks and the run tickets shows the total oil run from all five of the wells and does not segregate the oil belonging to any one well.

Q. State whether or not you went to Houston, Texas, the domicile of the Gulf Refining Company of Louisiana, for the purpose of examining the books of the Company with regard to the production of this well?

A. I did.

Q. Did you make an examination of the Company's books?

A. Yes, sir.

Q. Did you find anything whatever on those books which showed the production of the well Marshall No. 4?

A. I found only the estimated production, prepared by the Gulf Refining Company of Louisiana, as answered in their interrogatories.

Q. That is just an estimate?

A. Yes, sir.

Q. In your opinion is that estimate correct?

A. In my opinion it is not.

Q. Why?

A. Because the wells were operated into common tanks and the oil run from any single well no record was kept of the oil run from any single well, during the entire period.

Q. What is the basis of the estimate that you have made?

A. The basis of my estimate, I took the entire production of all five of the wells, the value of the production on the day the oil was run and divided it equally as between the five wells operated on the lease, in order to get the production or estimated production of Well No. 4, which is 81,472.10 of the value of $77,278.79.

Q. State whether or not you made an investigation of the production in the eighteen Ferry Lake cases?

A. I made the investigation as to the production, and value of the production in these cases.

Q. In any of the other suits, did you find a situation like this where several wells were run into common tanks, where it was impossible to segregate or identify the production of each particular well?

187 A. I did.

Q. In those cases, or cases of that nature what process was followed in arriving at the production of the well or wells in suit?

A. The oil and the value of the oil was divided as equally between the wells operated together. In other words we took the total number of barrels of oil produced and divided it by the number of wells that had been operated together.

Q. From your knowledge of the records of the Gulf Refining Company of Louisiana, is there any reason why that same method should not be followed in this case?

A. I do not see any reason why it should not be done in this case.

Q. I show you statement, which I will mark 'Neal Estimate' and ask you to state whether or not this estimate is correct, in your opinion?

A. The estimate is as near correct as I can make one at this time with no other records than the total production and value of the oil produced from the five wells.

Counsel for Plaintiff offers in evidence the estimate identified by the witness and marked "Neal Estimate".

Filed in Evidence and marked "Neal Exhibit."

On Cross Examination he said:—

By Mr. Herold:—

Q. Your estimate is merely an average of the production of the five wells, during the time that well No. 4 was producing?

A. Yes sir, assuming that each well produced the same amount of oil.

Q. Then assuming that it was an average of the wells?

A. Yes sir, that is correct.

Q. You have no figures on which to arrive at an estimate, satisfactory to yourself, on that well, independent of that?

A. No, sir.

Q. You are satisfied in this case as to the cost of drilling and operating this well?

A. Yes, sir.

Q. Said cost up to December 31st, 1917 was $20,643.92?

A. Yes, sir.

188 LIONEL L. JANES, a witness for the Plaintiff being recalled for the purpose of further Cross Examination, testified as follows, after being first duly sworn:—

On Cross Examination he said:—

By Mr. Looney:—

Q. Mr. Janes, you made an investigation, of what you call in your report the lower terrace, which is the land below the 173.09 foot contour, down to about 165 foot contour, now what character of growth did you find on that land?

A. Well that is covered, or was covered during the raft period with cypress timber, and a good deal of that timber has been removed by erosion.

Q. During the raft period it was covered with cypress timber?

A. Yes, sir.

Q. What did the character of the timber there indicate as to the character of the land?

A. That strip there is below the mean high water mark in the lake during the raft period and was inundated for a considerable part or most of the year.

Q. Is it the same character of growth that grows on overflowed land?

A. Well no sir, those lands that are overflowed only occasionally have a complex forest, consisting of oak, red gum and other species while a strip that is inundated for a considerable part of the year you have one species of cypress, and a few planer trees.

Counsel for Plaintiff objects to any evidence tending to show that the land in controversy in this case is swamp or overflowed land in character, within the meaning of the swamp land grant, for the reason, first that parol testimony is not admissable to show that the land in controversy is swamp or overflow in character, because the proper foundation therefor has not been laid, it not having been shown that the State of Louisiana selected the land in suit, and that said selection was not approved.

Counsel for Plaintiff further objects on the ground that the land has never been selected by the State of Louisiana as swamp or overflow land and that the same has
189 never been approved to the State.

The objection is overruled, the objection going to its effect.

Bill of exceptions reserved by Counsel for Plaintiff.

A. The territory below the 173.09 foot contour, the mean high water mark during the raft period was overflowed for a greater part of the year.

Q. Now Mr. Janes, you made a report to the Government of your Ecologic survey?

A. Yes, sir.
Q. Did you make a condensed report also?
A. Yes, sir.

Counsel for Defendant C. W. Lane offers the condensed report referred to in evidence, same to be furnished later.

On Re-Direct Examination he said:—

By Mr. Hunter:—

Q. Mr. Janes, you have been questioned with regard to certain areas lying below the 173.09 foot contour, and I understand you have been testifying in this cross examination with reference to such lands have you not?

A. Yes, sir.

Q. State whether or not, anything in your testimony relative to this matter has been made in connection with the areas involved in this suit, Lot one of section Three?

A. I do not think so.

Q. What is the character of Lot one of section Three?

A. Lot one of section Three is high, dry up land, ranging in elevation from 173.09 foot contour to more than 180 feet, covered with up land forest, the land is high, dry and naturally well drained not dissimilar to other up lands adjacent.

Q. What do you say in regard to the drainage of Lot one of section three?

A. The lot is naturally well drained, sloping West to Ferry Lake, and the slope is ample to pro-
190 vide good natural drainage.

Q. Without any artificial drainage?

A. Yes, sir.

Q. Have you seen the well located on this lot?

A. Yes, sir.

Q. Is it or not situated on or above the 180 foot contour?

A. It is situated a little above the 180 foot contour.

Q. It is situated on the land in controversy?

A. Yes sir, lot one of section Three.

Q. Are there any swamps, basins or ponds on lot one of Section Three?

A. No, sir, there are no swamps, basins or marshes of any character and no swamp vegetation on lot one of section three and no evidence that there ever was any there that I can see.

Defendant's Evidence.

Counsel for defendant in suit of United States vs C. W. Lane et al offers in Evidence the opinion of the Attorney General in the Ferry Lake.

Filed in Evidence and marked defendant No. 2.

Counsel for defendants offered in Evidence a certified copy of the patent from the United States to the heirs of John A. Russell dated April 26th, 1906, according to the field notes and plat in the General Land Office.

Filed in Evidence and marked defendant No. 3.

Counsel for Defendants offered in Evidence the field notes and plat of the United States Official Survey made by A. W. Warren United States Deputy Surveyor in 1839, upon which said patent was issued, filed in the suit of the United States vs Jeems Bayou Fishing and Hunting Club et al No. 1157, with leave to file a certified copy for use in this case, if need be.

191 Counsel for Defendants offered in Evidence certified copy of lease from Henry M. Russell et

al to the Producers Oil Company dated October 7th, 1910, with leave to filed certified copy thereof.

Filed in Evidence and marked exhibit No. 4.

Counsel for Defendants offered in Evidence certified copy of descriptive list of the transfer of the swamp and overflowed lands situated in the Parish of Caddo granted to the Board of Commissioners of the Caddo Levee District, showing transfer of lands in section Three Township Twenty North of Range sixteen west dated July 6th, 1901, filed and recorded October 10th, 1901 in Conveyance book No. 28 pages 329 and 332 of the conveyance records of Caddo Parish, Louisiana.

Filed in evidence and marked exhibit No. 5.

Counsel for Plaintiff objects to the document marked No. 5 on the ground and for the reason the proper foundations therefor has not been laid, it not having been shown that the State of Louisiana ever selected or ever attempted to select the land in controversy, or that the same was ever approved to the State by the United States.

Objection overruled, to which Counsel for Plaintiff excepts and reserves a bill of exceptions.

Counsel for defendant offers in Evidence lease from the Board of Commissioners of the Caddo Levee Board to C. W. Lane, dated June 6th, 1910.

Filed in Evidence and marked exhibit No. 6.

Counsel for Defendant offered in Evidence a certified copy of the assignment of lease from Charles W. Lane

of his lease from the Board of Commissioners of the Caddo Levee District to the Producers Oil Company dated June 30th, 1910.

Filed in Evidence and marked exhibit No. 7.

Counsel for Defendants offered in Evidence copy of the agreement of date June 30th, 1910, between C.
192 W. Lane and the producers Oil Company as to the royalties to be paid C. W. Lane under the assignment of the lease from the Board of Commissioners of the Caddo Levee District.

Objected to by Counsel for C. W. Lane, as it is enlarging the pleadings and changing the issues in the case.

Objection overruled, to which Counsel for C. W. Lane excepts and asks that this note stand in lieu of formal bill of exceptions.

Filed in Evidence and marked exhibit No. 8

Counsel for Defendants offers in evidence letter dated October 24th, 1908, and November 6th, 1908 from George Otis Smith, directed to the Secretary of the Interior and found in Bullitin No. 623 pages 113 to 116, for the purpose of showing that there was only one tract of land claimed by the United States as public land and disclaiming all right title and interest in all other lands.

Counsel for the Plaintiff states that the letters above referred to were offered in Evidence by Plaintiff in chief, but that the offering by the defendants for the purposes stated is objected to for the reason that such evidence is irrelevant, incompetent and immaterial and has no bearing upon any issue in this case, because first. It was not

intended to operate as a disclaimer of title and secondly, if such construction could be placed upon the letter then only Congress can dispose of the public domain.

Same ruling and bill of exceptions reserved.

Same to be supplied.

Counsel for defendants offered in Evidence the run of the Oil from Lane Levee Board, and division order, dated January 1st, 1911 executed by the Producers Oil Company and C. W. Lake, and Board Commissioners of the Caddo Levee District, with leave to substitute a certified copy thereof.

Filed in Evidence and marked exhibit No. 9.

193 Another division order dated May 1st, 1916, showing the runs of the oil Board Commissioners Caddo Levee District, C. W. Lane and Producers Oil Company, with leave to substitute a certified copy thereof.

Filed in Evidence and marked exhibit Deft. No. 10.

In the case of the United States vs Southwestern Gas and Electric Company Counsel for defendant offers in evidence, a certified copy of patent for the United States to Robert L. Gibbs [Gilbert], for the Fractional East half of Section Thirteen Township Twenty North of Range Sixteen West, Louisiana meridian.

Filed in Evidence and marked exhibit No. 11.

Counsel for defendant offered in Evidence by reference with leave to substitute a certified copy thereof act of

sale from Robert L. Gibbs [Gilbert] to the Caddo Oil Gas Company as recorded in Conveyance Book No. 44, page 409, of the records of Caddo Parish La. with leave to substitute a certified copy thereof.

Leave of date September 8th, 1909 from the Caddo Oil and Gas Company, to the Gulf Refining Company of Louisiana, as recorded in Conveyance book No. 57 page 59 of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

Act of sale from the Caddo Oil and Gas Company to the Southwestern Gas and Electric Company, as recorded in Book ..... page ..... of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

In the suit of the United States vs Mrs. Jesse N. Le Robadiere, No. 1164 Counsel for Defendant offers in Evidence patent from the State of Louisiana to W. H. B. Croom, dated June 28th, 1898.

To which offering Counsel for Plaintiff objects on the ground and for the same that if same is offered to show title under the swamp land grant, it is incompetent and immaterial because the proper foundation has
194 not been laid, it not having been shown that the State of Louisiana ever attempted to select or ever selected the land in controversy, or that it was ever approved to the State by the United States.

Objection overruled, and bill of exceptions reserved by Counsel for Plaintiff.

Counsel for Defendants offers in Evidence act of sale dated April 4th, 1901, from W. H. B. Croom to Jessie N.

Hostetter, as recorded in Book 27 page 348 of the records of Caddo Parish, Louisiana with leave to substitute a certified copy thereof.

Act of sale from Jessie N. Hostetter to the Gulf Refining Company of Louisiana, dated December 12th, 1908, as recorded in Conveyance Book No. 51 page 506 of the records of Caddo Parish, Louisiana with leave to substitute a certified copy thereof.

In suit No. 1158, United States vs Gulf Refining Company of Louisiana Counsel for Defendants offers in Evidence a certified copy of patent from the United States to James Shimick of fractional Section Twenty four, Township Twenty North of Range Sixteen West Louisiana meridian.

Counsel offers in Evidence by reference with leave to substitute a certified copy, conveyance from the State of Louisiana through the State, Register of the State Land Office to the Board of Commissioners of the Caddo Levee District, as recorded in Book ..... page ..... of the records of Caddo Parish, Louisiana.

Counsel for Plaintiff objects to the offering just made for the reason same is incompetent to show title under the swamp land grant act, because it has not been shown that the land was ever selected or approved to the State of Louisiana.

Same ruling and bill of exceptions reserved.

195 Counsel for defendants offers in Evidence act of sale from the Board of Commissioners of the Caddo Levee District to Sam W. Mason dated February

27th, 1909, as recorded in Conveyance Book No. 57 page 11 of the records of Caddo Parish, Louisiana.

Act of sale from Sam W. Mason to R. R. Norvell as recorded in Conveyance Book No. 68 page 658 of the records of Caddo Parish, La., with leave to substitute a certified copy thereof.

Act of sale R. R. Norvell to the Gulf Refining Company as recorded in Conveyance Book No. 57 page 174 of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

In the case of the United States vs W. W. Walling Counsel for Defendant offers in evidence certified copy of patent from the United States to Thomas W. Marshall covering the West half of The North East quarter of lot five of section Ten, Township Twenty North of Range sixteen West, with leave to substitute a certified copy thereof.

Counsel for defendant offers in Evidence abstract of title prepared by the Caddo abstract Company Limited of Lot 5 of section Ten, Township Twenty North of Range sixteen West Louisiana meridian.

Evidence closed.

I hereby certify that the above and foregoing is a true and correct translation of my Stenographic notes taken on the trial of the above numbered and entitled causes.

R. B. COOK,
Stenographer.

196 "B" 4-207.

CRGO General Land Office,
Department of the Interior,
Washington, D. C.

November 8, 1917.

I hereby certify that the annexed copy of letter dated December 15, 1908, is a true and literal exemplification from the press copy on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal) D. K. PARROTT,
Acting Assistant Commissioner of
the General Land Office.

(PLTFF'S EXHIBIT "A"—LETTER DEC. 15, 1908).

File.

Department of the Interior,
General Land Office,
Washington, D. C.

December 15, 1908.

Address only the
Commissioner of the
General Land Office.

See, also,
1910-44655.

Register and Receiver,
Natchitoches,
Louisiana.

Sirs:

To conserve the public interests, and, in aid of such legislation as may hereafter be proposed or recommended,

the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, Natchitoches Land Office, Louisiana, are, subject to existing valid claims, withdrawn from settlement and entry, or other form of appropriation.

Respectfully,

FRED DENNETT, Commissioner.

197 Approved:

JAMES RUDOLPH GARFIELD,
Secretary.

Indorsed:—1153, et seq. Plaintiff A. R. B. Cook, Stenographer. Filed Jan. 21, 1919.

198 Department of the Interior,
DMG—"FS" General Land Office,
"B" Washington, D. C.

CRGO November 24, 1917.

I hereby certify that the annexed copy of telegram dated December 15, 1908, is a true and literal exemplification from the copy of said telegram on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

(Seal) D. K. PARROTT,
Acting Assistant Commissioner of
the General Land Office.

"A" DMG-3C
ECF
ECP

Department of the Interior,
General Land Office,
Washington, D. C.

December 15, 1908.

Telegram.

Copy.

Register and Receiver,
Natchitoches, Louisiana.

Public lands in townships fifteen to twenty-three North, inclusive, of ranges ten to sixteen west, inclusive, Louisiana Meridian, withdrawn this date by Secretary from all settlement, entry, and appropriation.

DENNETT, Commissioner.

RPF
Official Business
Government Rate.

Filed Feb. 28, 1918. (Plaintiff C).

199 1172 1172.

PLAINTIFF D.

4-207.

DMG—"FS" Department of the Interior,
"B" General Land Office,
Washington, D. C.

CRGO

December 8, 1917.

I hereby certify that the annexed copy of office letter dated December 15, 1908, is a true and literal exemplification from the press copy on file in this office.

In witness whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal) D. K. PARROTT,
Acting Assistant Commissioner of the General Land Office.

"A" Department of the Interior,
ECF General Land Office,
ECF Washington, D. C.

December 15, 1908.

Address only the
Commissioner of the
General Land Office.

Register and Receiver,
Natchitoches, Louisiana.

Sirs:

Confirming my telegram of December 15, 1908, you are advised of the withdrawal on that date by the Secre-

tary, from all settlement, entry, and appropriation of the public lands in townships 15 to 23 North, inclusive, of ranges 10 to 16 West, inclusive, Louisiana Meridian. Make proper notations upon your records.

No rights whatever can be obtained by any location or settlement made, or claim initiated after the withdrawal; and any applications, selections, or entries based thereupon must be rejected by you subject to appeal.

Applications, selections, entries, and proofs based upon selections, settlements, or rights initiated prior to the date of withdrawal may be received by you and allowed to proceed under the rules up to and including the submission of final proofs. You must not, however, in such cases, receive the purchase money or issue final certificates of entry, but must suspend the entries and proofs pending investigation as to the validity of the claims with regard to the character of the land and compliance with the law in other respects. You will place such suspended cases in a file in your office, and for the information of this office prepare and forward a schedule thereof with your monthly returns upon Form 4-115.

Very respectfully,

FRED DENNETT, Commissioner.

RPF

Filed Feb. 28, 1918.

201 (PLTFF'S. EX. F-1).

In 1172 DMG—K1

Department of the Interior,
United States Geological Survey,
Washington.

Div'n Mails & Files
Received Oct. 26, 1908.
Department of the Interior.

Office of
Received Oct. 26, 1908.
The Secretary

Office of the Director.

October 24, 1908.

The Honorable,
The Secretary of the Interior.

Sir:

I desire to bring to your attention an extreme case of the waste of mineral resources in the United States, in the hope that the legal officers of the Department may be able to suggest some method of conservation. The Chief Geologist of the Survey, C. W. Hayes, recently visited the Caddo oil field in Louisiana, in company with David T. Day, who is in charge of the Survey's investigation into the subject of oil production. The Chief Geologist's report is as follows:

This field is located about twenty-five miles northwest of Shreveport, Louisiana, in Caddo Parish. The field,

as at present outlined by the preliminary well drilling, is very narrow and extends for some ten miles in a northwest and southeast direction. There is every indication of further extension of the field to the north and southeast. In fact, no definite limitations have as yet been determined for the field, and it may be safely assumed from present conditions that it is likely to be of much greater extent.

This field has only lately come into prominence as a producer of petroleum, but for several years has given evidence of very great natural gas pressure, and several gas wells have been connected by pipe lines, first with Shreveport and later with Texarkana, by six and eight inch pipe lines respectively.

Some four years ago one of the natural gas wells in this field began to leak badly around the casing due to poor work in packing the well above the gas-bearing sand. This leakage rapidly increased so that the well soon "blew out", that is, the pressure of the gas blew the pipe out of the ground and tore away the surrounding
202 earth, and the pipe derrick, drilling apparatus, etc., all fell into the well and were submerged by water which blew out with the gas. The gas, under heavy pressure, continued blowing out from this well for about four years. It was gradually drowned out by salt water, and eventually the escape of gas ceased. This blowing out from indifferent work in packing the wells has been repeated in three other cases, and at the present time the gas is boiling up so rapidly around the casing of a fifth well that another "blow out" can be expected within a short time. In one well a crater about three hundreed feet in diameter has been formed, which is usually about half filled with water or thin mud containing some petroleum. In the middle of this the gas

boils up making a large mud volcano, and periodically the entire crater fills with oil and water overflowing into Caddo Lake.

It is absolutely impossible to measure the waste of gas from this well which has been in progress about two years; but it has been estimated by various persons familiar with gas wells at fifteen million cubic feet in twenty-four hours. Still greater waste of this valuable natural fuel is going on at a dry well about a mile due west of the well noted above. Here the gas is burning with a flame varying from seventy to one hundred feet in height, and the waste is evidently greater than in any other well in the field. In both of these wells enough of the casing remains in place to prevent the caving of the sides which might in time check or entirely stop the flow of gas. The total waste in this only partially developed field has been estimated as at least 75,000,000 cubic feet per day or over 1700 tons. This is more than one-twentieth of the total amount of natural gas usefully consumed in the entire United States.

No effort is being made to control these wells, and there is no record in the history of the United States of such wanton waste with absolutely no effort to check it.

The engineering problem of putting down a series of wells within two hundred feet of these burning wells is extremely simple, and it could be confidently expected that such wells, properly drilled, would draw off
203 the gas and so reduce the pressure until the blown out wells could be controlled and safely filled in. No such attempt is being made because the oil men have the fanciful belief that after the gas has blown off the production of oil will be improved—an idea for which there is no justification, as this rapid escape of gas rather injures the oil chances of the field by permitting an influx of salt water as the gas pressure is re-

moved. The apparent real reason for this profligate waste is that there is no immediate use for the gas beyond that supplied now for Shreveport and Texarkana, and the sensational exhibition of this burning gas at night is a spectacle which will advertise the field to those passing through on trains.

An investigation of this oil field in cooperation with the Geological Survey of Louisiana is now in progress and additional information concerning it will be available in a short time.

It has been suggested that if any federal lands remain in this vicinity, there might be some basis for injunction to stop this needless waste. It is evident that engineering difficulties of considerable magnitude are involved, but the geologists of the survey believe that the operators will be able to control the gas if a serious endeavor is made.

Very respectfully,

GEO. OTIS SMITH, Director.

204 (PLAINTIFF'E EXHIBIT No. F-2 IN 1172).

Deft. 19.

Letter of November 6, 1908, from Director to Secretary.

November 6, 1908.

The Honorable,
The Secretary of the Interior.

Sir:

In connection with my letter of October 24 on the subject of the wanton waste of natural gas in the Caddo oil fields in northwestern Louisiana:

I have the honor to advise you that a search made by the General Land Office shows that lands remaining in Federal ownership in the neighborhood of this oil field are as follows:

Township 14 North, Range 10 West:
N. ½ NE. ¼, Sec. 14; N. ½ NW. ¼, Sec. 34.

Township 15 North, Range 10 West:
Lots 6 and 10 of Sec. 8, area 8.20 acres.

Township 17 North, Range 10 West:
Secs. 26 and 35, in Lake Bistineau.

Township 18 North, Range 10 West:
S. ½ SE. ¼, Sec. 26.

Township 19 North, Range 10 West:
W. ½ NW. ¼, Sec. 30.

Township 21 North, Range 10 West:
NW. ¼ NE. ¼ SW. ¼ SE. ¼, Sec. 25.

Township 19 North, Range 12 West:
All Sec. 28 except lot in SE. ¼ SE. ¼, 30.27 acres, old bed of Lake Bodcau.

Township 15 North, Range 14 West:
NE. ¼ NW. ¼, NW. ¼ NE. ¼, Sec. 12.

Township 16 North, Range 14 West:
NW. ¼ NW. ¼, Sec. 24.

Township 20 North, Range 14 West:
SE. ¼ SW. ¼, Sec. 8.

Township 15 North, Range 15 West:
NW. ¼, Sec. 6.

Township 17 North, Range 15 West:
NW. ¼, Sec. 5, E. ½ NE. ¼, Sec. 6.

Township 18 North, Range 15 West:
E. ½ SE. ¼, Sec. 14.

Township 19 North, Range 15 West:
NE. ¼, Sec. 14, SE. ¼ NE. ¼, Sec. 26.

Township 15 North, Range 16 West:
SW. ¼ NW. ¼, Sec. 2; W. ½ NE. ¼ and SW. ¼, Sec. 18; SW. ¼, Sec. 19.

Township 16 North, Range 16 West:
W. ½ NE. ¼ and SW. ¼, Sec. 19; NE. ¼ SE. ¼, Sec. 24; W. ½ Sec. 30; W. ½, Sec. 31.

Township 17 North, Range 16 West:
S. ½, Sec. 6; Lot 2 (34.39 acres) Sec. 30.

Township 18 North, Range 16 West:
SW. ¼, Sec. 6; NW. ¼, Sec. 7; NW. ¼, E. ½ SW. ¼, SW. ¼ SW. ¼, Sec. 13; W. ½ SW. ¼ and SE. ¼ SW. ¼, Sec. 28; SW. ¼, Sec. 30; E. ½ NW. ¼, Sec. 36.

Township 19 North, Range 16 West:
SW. ¼, Sec. 7; SW. ¼ SE. ¼ and W. ½, Sec. 8; SW. ¼, Sec. 30.

Township 20 North, Range 16 West:
NE. ¼, SE. ¼, Sec. 1; SW. ¼ SW. ¼, Sec. 3 (for S. ½ SW. ¼, Sec. 3, See "C", Aug. 24, 1905).

Among these lands, that located in Township 20 North, Range 16 West, and comprising the NE. ¼ SE. ¼, Sec. 1, as well as SW. ¼ SW. ¼, Sec. 3, are clearly within the known productive area of this oil and gas
205 field. The waste of natural gas referred to in my previous letter on this subject constitutes an evident drain upon the mineral resources of the public domain. If permitted to continue it will inevitably destroy the mineral value of this public land, and render it worthless in a comparatively short time.

If the Government, by reason of these holdings, can ask for an injunction against further drilling for oil or gas within the area of the Caddo field until effective measures are taken both to stop the present waste of gas and to insure wells now being drilled against similar "blowing out", I would recommend that this action be taken. Whether such an injunction is not possible, the determination of the conditions necessary for the protection of the Government and other property in this vicinity might well be entrusted to a commission to consist of a member of the Geological Survey, a member of the General Land Office and the State Geologist of Louisiana.

I have the honor to further recommend that all the lands described herein be withdrawn from entry pending the investigation now under way as to their value for oil and gas and also that all public lands in Texas within a width of two sections from the Louisiana line opposite the tract between Townships 18 and 20 in Louisiana be similarly withdrawn from entry.

Very respectfully,

GEO. OTIS SMITH, Director.

Deft.'s 19—Item 26. 1157.

206 4-207.

"B" Department of the Interior,
General Land Office,
CRGO Washington, D. C.

November 8, 1917.

I hereby certify that the annexed copy of order of withdrawal, Petroleum Reserve No. 4, approved July 2, 1910, is a true and literal exemplification from the original order on file in this office.

In witness whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(Seal) D. K. PARROTT,
Acting Assistant Commissioner
of the General Land Office.

(PLAINTIFF'S EXHIBIT "B"—LETTER, JULY 1, 1910).

ECF
dmg—lfs
(Stamp)
54239
Jul. 9, 1910.

Department of the Interior,
United States Geological Survey,
Washington.

Office of the Director.

July 1, 1910.

The Honorable,
The Secretary of the Interior.
Sir:

In accordance with your instructions I recommend the withdrawal for classification and in aid of legislation affecting the use and disposition of petroleum deposits belonging to the United States of the following areas in the State of Louisiana, involving approximately 314,720 acres:

(Stamp)
Received Jul 9, 1910.
G L O

207

Petroleum Reserve No. 4, p. 2.
dmg-2fs

Order of Withdrawal.

Petroleum Reserve No. 4.

It is hereby ordered that that certain order of withdrawal heretofore made on December 15, 1909, insofar

as the same includes any of the lands hereinafter described, be, and the same is hereby ratified, confirmed and continued in full force and effect; and subject to all of the provisions, limitations, exceptions, and conditions contained in the act of Congress entitled "An Act to authorize the President of the United States to make withdrawals of public lands in certain cases", approved June 25, 1910, there is hereby withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States, all of those certain lands of the United States set forth and particularly described as follows, to-wit:

Louisiana Principal Meridian, Louisiana.

T. 17 N., R. 10 W., all of township.
T. 18 N., R. 10 W., all of township.
T. 18 N., Rs. 14 to 16 W.
T. 19 N., Rs. 14 to 16 W.
T. 20 N., Rs. 14 to 16 W.
T. 21 N., Rs. 14 to 16 W.
T. 22 N., R. 15 W., all of township.
T. 22 N., R. 16 W., all of township.
T. 23 N., R. 15 W., all of township.
T. 23 N., R. 16 W., all of township.

Very respectfully,

GEO. OTIS SMITH, Director.

208 July 1, 1910.

Respectfully referred to the President with the recommendation that the same be approved.

R. A. BALLINGER,
Secretary.

Approved July 2, 1910, and referred to the Secretary of the Interior.

WM. H. TAFT,
President.

Referred to the Commissioner of the General Land Office for appropriate action.

FRANK PIERCE,
Acting Secretary.
DMC.

Indorsed:—1153, et seq. Plaintiff's B. R. B. Cook, Stenographer. Filed Jan. 21, 1919.

209 (PLAINTIFF'S EXHIBIT C. IN 1153 ET SEQ.)

4-207.

360070
"B"
CRGO

Department of the Interior,
General Land Office,
Washington, D. C.

January 14, 1918.

I hereby certify that the annexed copy of office letter dated September 27, 1913, is a true and literal exemplification from the press copy on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

(Seal)

D. K. PARROTT,
Acting Assistant Commissioner of
the General Land Office.

360070—1 B

In Reply please refer to "E" CLDB

09-122623.

FCH
JHC
DMG

Department of the Interior,
General Land Office,
Washington, D. C.

September 27, 1913.

Address only the
Commissioner of the Land Office.

Special Instructions.

Re-examination and surveys in T. 20 N., R. 16 W., Louisiana Meridian, "Ferry Lake", Louisiana.

Mr. Arthur D. Kidder,
Supervisor of Surveys,
General Land Office.

Sir:

Pursuant to instructions contained in letter of the First Assistant Secretary of the Interior dated September 3, 1913; you are directed to proceed, with the least
210 possible delay, to T. 20 N., R. 16 W., Louisiana Meridian, Louisiana, and there make a careful examination of the original surveys of the exterior, subdivisional and meander lines of said township and such additional land, topographic and hydrographic surveys as may be necessary to accurately and minutely carry out the instructions contained in the above named letter, a copy of which is handed to you herewith.

"E" A D K 360070—2 B

Limits and Character of Work.

This assignment provides for the necessary field examination to definitely determine the position of the original meander line of Ferry Lake with relation to the exterior and subdivisional line of T. 20 N., R. 16 W., including the Louisiana-Texas boundary line, as shown upon the official plats approved August 31, 1839, July 24, 1846, March 31, 1854, August 18, 1871, and May 29, 1896, and to further determine if possible the relation of said lines to the area actually covered by the waters of Ferry Lake in 1812, in 1839 and at the present time.

You will cooperate with Mr. G. C. Matson, Associate Geologist, assigned by the Director of the U. S. Geological Survey, in making an exhaustive investigation of such evidence as may now exist bearing upon the locus of the lake in 1812 and 1839, and carefully consider and report upon all evidence of geological, topographical or hydrographical character, physical conditions respecting timber growth both past and present, within and without the surveyed meander line, including the testimony of persons long acquainted with the locality, to the end that every ascertainable fact may be reported to the Secretary of the Interior upon which may be based his answers to the questions (first) did Ferry Lake exist as a navigable body of water, in the year 1812, when Louisiana was admitted into the Union; (second) did Warren's survey correctly meander Ferry Lake as it existed at the date of the admission of Louisiana into the Union? Before the second question can be answered it is vitally important to determine whether or not Deputy Warren correctly meandered Ferry Lake as it existed in the year 1839, when his survey was executed.

211

Data.

For your guidance in making the examination, survey and investigation herein provided for, you will be furnished with photolithographic copies of all official plats of Ts. 19, 20 and 21 N. Rs. 15 and 16 W., (twelve in number), and complete transcripts of the field notes of the official surveys of the exterior, subdivisional and meander lines of T. 20 N., R. 16 W., including the Louisiana-Texas boundary line and the contiguous exterior, subdivisional and meander lines of the adjoining townships.

Method and Order of Procedure.

Your first duty in the field will be to identify the evidence of the existing monuments of the original surveys, and thereafter to neglect no evidence offered by property corners, Court records, local surveyors and citizens able to give clear and convincing testimony tending to the recovery of obliterated corners. All identified and recovered corner points will then be remonumented in their respective original positions. You will, thereafter, reestablish all lost corners by proportionate measurement, following strictly the provisions of the pamphlet on "Restoration of Lost or Obliterated Corners", revision of June 1, 1909.

The next step in the field will be the fixation of the original meander line as returned in the official field notes. A retracement will be made based upon the courses and distances so returned in the original field notes, and the closing error determined; the errors in latitude and departure will then be distributed along each course in proportion to the lengths thereof. The several angle points along the reestablished meander line will be perpetuated by suitable monuments.

While the above examination and survey are in progress it may be presumed that the geologist will be engaged in developing evidence relative to the true locus of the area covered by the waters of Ferry Lake in 1812 and in 1839.

All points of definite geological or historical interest will be carefully located with respect to the reestablished survey monuments, and such additional topographic and hydrographic surveys will be made, as may be deemed advisable and helpful towards the ultimate answers to the questions herein set forth, including the datum reference of the elevation of the surface of Ferry Lake above mean gulf level.

Returns.

You will be required to submit the usual complete field notes of the resurvey and to prepare a correct resurvey plat of T. 20 N., R. 16 W., upon which plat will be mapped all points of historical interest and all features of topographical and hydrographical importance developed in survey.

Your field notes and plat will be supplemented by such general report of your field operations and observations as may be necessary to fully place before the Department all ascertainable facts relevant to the subject matter of this assignment.

Interested Parties.

You are directed to permit authorized representatives of the State of Louisiana, interested property owners or claimants, or their attorneys or surveyors, to be present during the progress of your field work, and to explain to them, if requested, the significance of any monument

established by you, or of any line projected by you for the purpose of carrying out these instructions.

Should any objection be raised to the course
213 pursued, the same should be filed in writing with you to be carefully considered and forwarded with your report with such comments thereon as you may desire to submit.

Very respectfully,

C. M. BRUCE, Commissioner.

9-25 JMB.

No. 1153, et seq. Plaintiff C. R. B. Cook, Stenographer. Filed Jan. 21, 1919.

214 (PLAINTIFF'S EXHIBIT D).

No. 1153 (E-3).

4-207.

360070 Department of the Interior,
"B" General Land Office,
CRGO Washington, D. C.

January 14, 1918.

I hereby certify that the annexed copy of office letter dated December 1, 1916, is a true and litreal exemplification from said letter on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

D. K. PARROTT,

(Seal) Acting Assistant Commissioner of the General Land Office.

09-122623 "E" CGT 360070—1 A.

Department of the Interior,
General Land Office. ESDB
Washington, D. C.
December 1, 1916.

Address only the
Commissioner of the General Land Office.

AGO
WH
DMG

Special Instructions: Ferry Lake Surveys, Louisiana.

Arthur D. Kidder,
Supervisor of Surveys,
General Land Office,

Sir:

I hand you herewith copies of the following letters relating to surveys in T. 20 N., R. 16 W., Louisiana Meridian, in the Ferry Lake oil field, Caddo Parish, Louisiana:

Office letter "09-122623 "FS" DMG.," dated October 5, 1916, to the chief of the Surveying Division;

Departmental letter dated September 21, 1916, to this office; and,

Acting Attorney General's letter dated September 11, 1916, to the Secretary of the Interior.

215 You will observe in the above letters that the survey has been ordered of the uplands lying between the erroneous original meander line of Ferry

Lake, as surveyed by A. W. Warren, D. S., in 1839, and Byron B. Bristol, D. S., in 1871, and the contour 173.09 feet above mean gulf level, which contour represents the actual mean high water elevation of the lake in 1812, when Louisiana was admitted into the Union, and in the year 1839, when T. 20 N., R. 16 W., was originally subdivided. You are accordingly directed to proceed to the field at the earliest practicable date and accomplish the required surveys, in person, or with such assistants operating under your personal direction, as may be necessary to bring about an early completion of the field work and prompt filing of the returns.

There are also handed you herewith two tracings indicating the exact position and extent of the uplands which are to be surveyed, embracing the tracts, omitted from the original surveys, involving, in the opinion of the Department, manifest error or material variation between the Warren and Bristol meander lines of Ferry Lake and the actual mean high water elevation of 1812, said tracings bearing titles as follows:

"Supplemental Plat of T. 20 N., R. 16 W.," and

"Supplemental Topographic Plat of T. 20 N., R. 16 W."

The new section, subdivision-of-section, connecting and meander lines, indicated upon the above described tracings, will be established and monumented. The new monuments to be established will consist of the regulation iron posts, 3 inches diameter (uniformly), suitably witnessed with bearing trees, and you will also replace with iron posts of the same size any corners of the resurvey executed in 1913 and 1914, marking the boundary of the lands to be surveyed, as you may find to have been destroyed since the date of said resurvey.

You will cooperate with Hon. G. W. Jack, United States Attorney, Department of Justice, and with D. R. Thompson, Mineral Inspector, this office, in the prepa-
216 ration of such maps and other technical data and records as may be required at the trial of the suits to be instituted by the United States against the various oil companies which have trespassed upon the areas which are to be surveyed under the instructions herewith.

Very respectfully,
(Signed) CLAY TALLMAN, Commissioner.

Dec. 5, 1916.

Approved:

ALEXANDER VOGELSANGER,
First Assistant Secretary.

11-18.

No. 1153, set seq. Plaintiff D. R. B. Cook, Stenographer. Filed Jan. 21, 1919.

217 Description of Tract.

Township No. Twenty—North.

Part of Section—Section—Township—Range—Acres, 100ths,—Character of Land—Selected—Approved.

All frl. 4; 20; 16; 125.00; Swamp; 18 May/52; Rejected.
N ½ of NW ¼, N ½ NE ¼; 5; 20; 16; 144.00; Swamp; 18 May/52; 1 Aug./54.
NE ¼ of NE ¼; 9; 20; 16; 40.00; Swamp; 18 Aug./61; List No. 81—June 12, 1900.
Lot 1; 10; 20; 16; 48.00; Swamp; 18 Aug./61.

All frl. 17; 20; 16; 496.85; Swamp; 18 May/52.

NW ¼ NE ¼ SE. fl. ¼ E ½ of SW ¼; 17; 20; 16; 416.45; Swamp; 18 May/52; 1 Aug. /54.

W. ½ of SW ¼; 17; 20; 16; 80.00; Swamp; 18 May/52; 14 Jany./60.

Pl. 21. R. B. Cook, Stenographer. 1157 (53). 1153 p. 5. Filed Jan. 21, 1919.

State Land Office.

Baton Rouge, La., Feby. 19, 1918.

I hereby certify that this copy is a true and literal exemplification of the record to which it purports to relate, now on file in this office.

(Seal) FRED. J. GRACE,
Register State Land Office.

218 Description of Tract. —

4-600.

Township No. 20 N. Range No. 16 W., District of Natchitoches, La.

Petroleum Reserve No. 4 Ex-Order July 2, 1910.

Part of Section—Section—Township—Range—Contents, Acres, 100ths—Rate per acre, Dollars, Cents—Purchase money, Dollars, cents—Name of Purchaser—Date of Sale.

4; 20 N.; 16 W.

Fracl Section 4; 20 N.; 16 W.; 1.25; Selected for State under act of Mar. 2d, 1849 "B" 12/26/16. Claim of State rejected per Comr's letter "K" dated July 26, 1895.

5; 20 N.; 16 W.

N ½ of NW 4 and N ½ of NE 4; 5; 20 N.; 16 W.; 144.00; Selected for State under Act March 2, 1849. Approved by Secy. of the Interior Aug./54, see List No. 1.

9; 20 N.; 16 W.

NE 4 of NE 4; 9; 20 N.; 16 W.; 40.00; Approved as Swamp and overflowed lands to the State of Louisiana, List No. 81, Secy. of the Interior, June 12/1900, L. 2015-2231.

17; 20 N.; 16 W.

All of Section 17; 20 N.; 16 W.; 496.45; Selected for State under Act March 2, 1849.

NW 4 of NE 4, SE 4 and E 2 SW 4; 17; 20 N.; 16 W.; 416.45; Selected for State per list March 2, 1849.

NW 4; 17; 20 N.; 16 W.; 160.00; Approved to state under act 3/2/49, on Aug. 1st, 1854. See Supplemental List No. 1.

W ½ of SW 4; 17; 20 N.; 16 W.; 80.00; Selected by State under Act 2d March, 1849. Appd. by Secy. Interior 14 Jany., 1860.

United States Land Office,
Baton Rouge, La.

Feby. 9th, 1918.

It is hereby certified that the above and foregoing is a full, true and correct showing of State Selections and Approvals in T. 20 N., R. 16 W., La. Mer., as shown by our tract books.

E. D. GIANELLONI,
Register.

Pl. 20. R. B. Cook, Stenographer. 1153 Item P-5. Filed Jan. 21, 1919.

219 (PLAINTIFF'S EXHIBIT NO. 22—LIST OVERFLOWED AND SWAMP LANDS).

Register of State Land Office,
State of Louisiana.
Baton Rouge.

Fred J. Grace, Register.

I hereby certify the hereto attached papers to be correct copies from the records of the late U. S. Surveyor General's Office, Louisiana, now a part of the records of this Office.

Witness my hand and official seal, this 19th day of February, A. D. 1918.

FRED J. GRACE,
(Seal) Register State Land Office.

Northwestern District of Louisiana.

List of Swamp and Overflowed land selected from the approved field notes of B. B. Bristol, U. S. Dept. Surveyor of surveys, in T. 20 N., R. 16 W., Northwestern District, Louisiana, accruing to the State of Louisiana under the provisions of an Act of Congress approved March 2d, 1849, excepting such portions thereof as are rightfully claimed or owned by individuals.

T. 20 N., R. 16 W.

Rejected—See Commissioner's Letter, Feb. 28, 1872.

Parts of Section	Sec.	Area	Remarks.
NE ¼ of NE ¼	9	40.00	Additional to that appr. May 18, 1852.
Lot No. 1	10	48.00	
Total		88.00	

Office of the Surveyor General, District of Louisiana.

New Orleans, 18th, August, 1871.

Examined and approved.

(Signed) E. W. FOSTER,
Surveyor General, La.

Northwestern District, La.

List of swamp lands, unfit for cultivation, selected as enuring to the State of Louisiana, under the provisions of an Act of Congress, approved 28th September, 1850, excepting such as are rightfully claimed or owned by individuals.

220 T. 20 N., R. 16 W.

All of Fract. 4 ..... 1.25
The N½ of NW¼, the N½ of NE¼ of 5 ..144.00
All of Fractl. 17 .....496.45

Surveyor General's Office.

Donaldsonville, La., May 18th, 1852.

Examined and approved.

(Signed) R. W. BOYD,
Surveyor General, La.

Surveyor General's Office.

Donaldsonville, La., July 5th, 1865.

The selection embraced in the foregoing lists of swamp lands in the Northwestern District, La., were erroneously reported as enuring to the State of Louisiana, under the Act of 28th Sept., 1850 instead of under the Act of 2d. March, 1849, by which latter act the same were granted. This certificate is to be considered as correcting selections under the law last above named.

(Signed) WM. J. McCULLOH,
Sur. Gen. La.

Pl. 22. 1157. R. B. Cook, Stenographer. Filed Jan. 21, 1919.

221 (PLAINTIFF'S EXHIBIT 1).

4-207.

DMG—"FS" Department of the Interior,
"B" General Land Office,
CRGO Washington, D. C.

January 16, 1918.

I hereby certify that the annexed extract copy of Louisiana tract book, so far as it related to section 3, T. 20 N., R. 16 W., Louisiana Meridian, is a true and literal exemplification from the tract book on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

D. K. PARROTT,
Acting Assistant Commisioner of
the General Land Office.

No. 1153 Lane. Plaintiff I. Filed Jan. 21, 1919.

222 Description of Tract.

4-600.

Township No. 20 N., Range No. 16 W., District of Natchitoches, La.

(Offered at Sale on the 27th Jany, 1840).

Tp. withdrawn from all disposal by Secy. Dec. 15, 1908. See "A" to R. & R., Natch., Dec. 15, 1908. Petroleum Reserve No. 4. Ex-Order July 2, 1910, Letter "N." July 16,1910—54239.

Resurvey for Restoration survey. Plat approved July 24, 1916, (no areas shown, original plat governs).

Suppl Plats (Sheets 1 and 2) of part of Tp. approved March 28, 1917, received in local office, Baton Rouge, April 14, 1917—745008.

Section; Township; Range; Contents, Acres, 100ths; Rate per acre, Dollars, Cts; Purchase money, Dollars, cents; Name of Purchaser; Date of Sale; No. of receipt and certificate of purchase; To Whom patented; Date of Patent.

NE qr. 160. All sec. offer. Apr. 24, 1880. 535.80.
Hd. NW. NW¼ 2 E½ of NE¼ and SW¼; NE¼; 3; 20; 16; 160.13; 10.00; Thomas H. Florence; Apr. 22, 1895; 6-141; Ex Recpt. No. 20285. F. C. 3691 Nov. 24/00.

N fr. ¼ of NW fr qr. 49.50; 3; 20; 16; 129.50; 10.00; James Allen; June 13, 1895; 6172; Canc. Sept. 3/01, Relq.
SE qr. of NW fr. qr. 40; 3; 20; 16; 87.20; 10.00; John A. Russell; Mar. 8, 1895; 6112; Canc. Sept. 28/01 Relq. for 2d. entry see H. E. 9203 this sec.
SW fr. qr. of NW fr. qr. 2050; JN; see sec. 4, M. A. 07507.
Hd. SE ¼; 3; 20; 16; 160.00; 10.00; William Henry Wadkins; Feb. 25, 1895; 6103; F. C. No. 3078, Sept. 21, 1898.
SE qr. 160 Hd. SE¼ SW¼ ;3; 20; 16; 39; 5; Victoria Perry; Sept. 26, 1896; 6630; F. C. No. 4040, Nov. 4, 1901.
Hd.; 3; 20; 16; 39; 5; Frank M. Graham; Jany. 23, 1896; 6394; Cancd. Reg. Rel. Sept. 26, '96—101737.
Hd. NW ¼ SW ¼ NE SW ¼ fr. SW NW ¼; 3; 20; 16; 87.30; 10; John A. Russell; Sept. 28/01; 9203; For former entry see H. E. 6112 this sec. F. C. 4709, Mch. 7, 1905.
Hd. NE qr. 3; 20; 16; 129.50; 10; Benjamin F. Iles; Sept. 3/01; 9136; Canc'd R. Feby. 3, 1905.

Act Mch. 3, 1855, N ½ NW ¼ NW ¼ NE ¼, SE ¼ NW ¼ 3; 20; 16; 129.50; Located with M. B. L. No. 54778 by Benjamin F. Iles, Feby. 3, 1905; 1267; E. & S. 21912.

S 2 SW 4; 3; 20; 16; See "C" of Aug. 24, 1905.
S fr. ½ of SW. fr. qr. 39.
Lot 1—25.67.
Lot 2—2.71.
Lot 3—9.05.

223 4-207.

760805

B Department of the Interior,
B General Land Office.

Washington, Feb. 2, 1918.

I hereby certify that the annexed copy of patent is a true and literal exemplification from the record which is in my custody in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

L. D. C. LAMAR,
Recorder of the General
(Seal) Land Office.

(DEFENDANT'S EXHIBIT NO. 3).

480 4-772.

The United States of America.

Homestead Certificate No. 4709.
Application 9203.

To all of whom these presents shall come, Greeting:

Whereas: There has been deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Natchitoches, Louisiana, whereby it appears that, pursuant to the Act of Congress, approved 20th May, 1862, "to secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental there-

to, the claim of The Heirs of John A. Russell has been established and duly consummated in conformity to law, for the northwest quarter of the southwest quarter, the northeast quarter of the southwest quarter and the fractional southwest quarter of the northwest quarter of section three in Township twenty North of Range Sixteen West of Louisiana Meridian, in Louisiana, containing eighty-seven acres and thirty-hundredths of an acre, according to the Official Plat of the Survey of the said land, returned to the General Land Office by the Surveyor General:

224 Now know ye, that there is therefore granted by the United States unto the said heirs of John A. Russell, the tract of land above described, to have and to hold the said tract of land, with the appurtenances thereof, unto the said heirs of John A. Russell, and to their heirs and assigns forever.

In testimony whereof, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-sixth day of September, in the year of our Lord one thousand nine hundred and six and of the Independence of the United States the one hundred and thirty-first.

(Seal) By the President: T. ROOSEVELT,
By F. M. McKEAN, Secretary.
C. H. BRUSH, Recorder of the General Land Office.

760805.

Filed Jan. 21, 1919.

225 DEFENDANT'S EXHIBIT NO. 5.

(Descriptive List of Swamp and Overflowed Lands Insofar as said List Relates to Section 3, Township 20 North, Range 16, West).

Descriptive list of swamp and overflowed lands, situate in the Parish of Caddo, and granted to "The Board of Commissioners for the Caddo Levee District," By Act No. 74 of the General Assembly of Louisiana, approved July 6, 1892, and Act No. 90, approved July 7, 1894, and transferred to said board by the Register of the State Land Office of Louisiana and the State Auditor and by virtue of the provision of said acts.

Fractional West ½ of Section 3, Township 20, North, Range 16 West, Northwest District, containing 104.20 acres, together with various other lands omitted under agreement of counsel.

Filed Jan. 21, 1919.

226 DFT. EX. 4.

Case No. 1153 Item 15.

R. B. Cook, Stenog.

State of Louisiana,
Parish of Caddo:

This contract by and between Mrs. Sallie G. Allen, widow, Mrs. Georgia Angell, wife of M. G. Angell, herein aided and authorized by her husband, M. G. Angell, Henry M. Russell, individually, and as tutor for Homer

Roberts, Albin Roberts and Ben Roberts, minor children of Lizzie Russell, wife of Hayman Roberts, both deceased; and John Russell, all residents of Caddo Parish, Louisiana, and Mrs. Sallie G. Allen, and John Russell, being represented herein by Henry M. Russell, as per power of attorney hereto attached and made part hereof; and Mrs. Mary G. Taylor, wife of L. A. Taylor of Bowie County, Texas, herein represented by Henry M. Russell, duly authorized, by power of attorney which is hereto attached and made part hereof, hereinafter styled first parties and Producers Oil Company, a corporation organized under the laws of the State of Texas, and domiciled at Houston, Harris County, Texas, hereinafter styled second party.

Witnesses: That first parties, being the owners in fee of the following described property and lands situated in the State of Louisiana, and Parish of Caddo, viz: The northwest quarter (NW¼) of Southwest (SW¼) Quarter and Northeast quarter of southwest quarter (NE¼ of SW½) and fractional southwest quarter northwest quarter (SW¼ of NW¼) of Section Three (3) Township Twenty (20) Range Sixteen (16) West, Caddo Parish, La., containing eighty-seven acres of land, it being agreed and understood that the lessees are hereby obligated to pay to the lessors herein for any excess of acreage above 87 acres, $250.00 per acre bonus, said excess to be further subject to all the other terms of this lease, including an extra well for each additional ten acres over and above 80 acres; the excess to be determined by survey made under arrangement between these lessors and the owners of adjoining lands, or by suit.

The said first parties hereby lets and leases to the second party the premises hereinabove described for the purposes of using and occupying the same, for drilling wells,

227 mining and exploring thereon and therein for for oil, gas, coal, water and other minerals and metals, and for the establishing and maintaining thereon such buildings, machinery, pipe lines, storage tanks and other structures as may be necessary to be made by second party in the business mentioned in this clause, hereby warrants and defends the title to said land, above described, unto said second party, its heirs or assigns, and obligates themselves to hold said second party harmless from all damages by reason of any defect in said title.

To have and to hold, all and singular, the above described premises, rights, properties, and privileges, and all such as are hereinafter specified, unto the said second party, its successors and assigns, forever, upon the following terms:

The terms and considerations of this contract are as follows: The sum of $250.00 per acre, payment whereof by the grantor is hereby acknowledged, such other payments by the grantee, if any, as may be hereinafter provided for, the royalties hereinafter specified, and the expenditure by the grantee of such sums of money as may have been or may hereinafter be made upon the above premise or upon neighboring lands planned for the development of mineral resources in such locality and the payments and expenditures made or that may be made, by grantee, are consideration, not only for the mineral rights in the lands aforesaid, but for the other privileges granted herein.

The royalty above mentioned as to oil shall be a quantity equal to one-eighth (1/8) up to 250 barrels; one-sixth (1/6) on the excess up to 300 barrels, and if more than 300 barrels and if more than 300 barrels, one-sixth (1/6) upon the whole production of all produced and saved up-

on the premises, the same to be delivered at the well, free of charge to the grantor, or to his credit in the pipe line to which such wells may be connected.

The royalty for coal shall be 4 cts. for every ton of the same that is mined and marked, payable monthly. The royalty for gas shall be $100.00 per annum for each well from which gas is used off the premises, the grantor to have the privilege, at his own risk and cost, to make connections and use gas free of charge for one dwelling on the premises.

The royalty for any other minerals discovered
228 shall be one-tenth of the net proceeds arising therefrom, while the same are being used off the premises.

Any payments due or to become due hereunder shall be deemed complete if made or tendered to the grantor.

It is agreed, between the parties that actual drilling for oil is to begin within the period of sixty days from the date hereof. Failure on the part of grantee to begin drilling within said time to operate and work a forfeiture of this lease.

Grantee further agrees to drill upon said land eight wells provided oil is found in each of said wells in paying quantities. There to be no interval between drilling said wells, to exceed one hundred and twenty days. It is agreed that each completed well shall insure to grantee ten acres of land surrounding said well, or next to and adjoining ten acres already earned by a previous well, to the final termination of this lease. A failure on the part of a grantee to begin drilling a new well within 120 days after finishing drilling a previous well to release

from the operation of this lease all lands not held by the previous drilling of a completed well. All wells to be drilled to deep oil strata as shown by wells in adjoining territory, unless oil is discovered in paying quantities at a less depth.

It is agreed that the grantor is to have the exclusive use of the premises hereinabove described for all purposes other than above mentioned. When requested, grantee agrees to bury all pipe lines below plow depth, and pay all damages to growing crops and fences, when injured by grantee or employees of same.

This lease is not intended as a mere franchise, but is intended as a conveyance of the property and privileges above described for the purposes herein mentioned, and it is so understood by all the parties hereto.

In case the grantee or the successors or assigns of such shall sink a well or shaft as provided herein, then this conveyance shall be in full force and effect for
229 twenty years from the sinking of said shaft, and as much longer as minerals are produced therefrom in paying quantities. It being understood that above term only applies to acreage held by the actual sinking of wells as provided above.

It is agreed that this contract, and all the terms hereof shall extend to and be binding upon the successors, legal representatives and assigns and successive assigns, of such parties respectively.

It is further agreed that the grantee shall have the free use of oil, gas, water and wood, from said land, for all development and operations thereon.

Upon the termination of this lease, from whatsoever cause, second party shall have the right to remove from said premises all of its machinery and property, placed thereon and therein.

Executed this 8th day of October A. D. 1910, in the presence of me, Notary, and attesting witnesses, at Shreveport, Caddo Parish, Louisiana.

MRS. SALLIE G. ALLEN,
By HENRY M. RUSSELL,
Attorney in Fact.
MRS. GEORGIA ANGELL,
By HENRY M. RUSSELL, in fact.
HENRY M. RUSSELL,
HENRY M. RUSSELL,
Tutor for minors Homer Roberts, Alvin Roberts and Ben Roberts.
JOHN RUSSELL,
By HENRY M. RUSSELL,
Attorney in Fact.
MRS. MARY G. TAYLOR,
By M. G. ANGELL,
Attorney in Fact.
PRODUCERS OIL COMPANY,
By C. P. CLAYTON, Agent.

Witnesses:
W. R. THOMAS,
E. J. ATHERTON.

EDWARD P. MILLS,
Notary Public, Caddo Parish, La.

230 State of Louisiana,
Parish of Caddo,

Before me, Edward P. Mills, a Notary Public in and for the Parish of Caddo, State of Louisiana, on this the 8th day of October, A. D. 1910, personally came and appeared, Henry M. Russell, and M. G. Angell, who in the presence of me, said authority, and W. R. Thomas and F. J. Atherton, competent witnesses, acknowledge that

that they are the identical persons who executed the foregoing instrument of their own free wills and accord, and for the purposes and considerations and in the capacity therein stated.

Thus done, and passed on the day and date hereinabove written in the presence of the before named and undersigned witnesses, who have hereunto subscribed their names, together with said appearers, and me, Notary, after reading the whole.

EDWARD P. MILLS,
Notary Public in and for
Caddo Parish, Louisiana.

W. R. THOMAS,
E. J. ATHERTON.

I hereby approve above lease inasfar as it concerns the interest of the Minors, Homer, Alvin and Ben Roberts.
Shreveport, La., October 8, 1910.

T. F. BELL, Judge.

State of Louisiana,
Parish of Caddo:

Before me, the undersigned, W. A. Ellett, Notary Public in and for the Parish of Caddo, State of Louisiana, personally came and appeared Sallie G. Allen, widow, a resident of above Parish and State, who declared that she does by these presents make, authorize, constitute and appoint Henry M. Russell of the Parish of Caddo, State of Louisiana, true and lawful attorney in fact, for her and in her name, place and stead to sell, lease or otherwise convey for cash or upon terms of credit or for royalties from minerals or otherwise, upon such conditions as said Henry M. Russell may see fit, her interest in the following described property northeast quarter of south-

west quarter and fractional northwest quarter of
231 southwest quarter and the southwest quarter of northwest quarter of section three, township twenty, range sixteen, Caddo Parish, Louisiana, and with full power to sign all papers, deeds, leases, etc., in her place and stead giving and granting unto said Henry M. Russell, attorney full power and authority to do and perform all and every act and thing requisite and necessary in the premises, as fully, to all intents and purposes, as said appearers might or could do if she were personally present, with full power of substitution and revocation, hereby ratifying and confirming any and all acts done by said agent and attorney, by virtue of this authority. Done and passed in presence of attesting witnesses on this the 26th day of April, 1910.

SALLIE G. ALLEN,
W. A. ELLETT,
Notary Public, Caddo Parish, La.

Attest:
C. H. THURMOND,
J. H. MARSHALL.

State of Louisiana,
Parish of Caddo.

Before me, the undersigned W. A. Ellett, Notary Public in and for the parish of Caddo, State of Louisiana, personally came and appeared John Russell, a resident of above parish and state, who declared that he does by these presents make, authorize, constitute and appoint, Henry M. Russell of the Parish of Caddo, State of Louisiana, true and lawful attorney in fact for him and in his name, place and stead to sell, lease or otherwise convey for cash or upon terms of credit or for royalties from minerals or otherwise, upon such conditions as said Henry

M. Russell may see fit, his interest in the following described property; northeast quarter of southwest quarter and fractional northwest quarter of southwest quarter and southwest quarter or northwest quarter of section three, township twenty, range sixteen, Caddo Parish, Louisiana, and with full power to sign all papers, deeds, leases, etc., in his place and stead giving and granting unto
232 said Henry M. Russell, attorney, full power and authority to do and perform all and every act and thing requisite and necessary in the premises, as fully, to all intents and purposes, as said appearers might or could do if he were personally present, with full power of substitution and revocation, hereby ratifying and confirming any and all acts done by said agent and attorney, by virtue of this authority.

Done and passed, in presence of attesting witnesses, on this the 26th day of April, 1910.

J. S. RUSSELL,

Attest:

C. H. THURMOND,
J. H. MARSHALL.

W. A. ELLETT,
Notary Public, Caddo Parish, Louisiana.

State of Texas,
County of Bowie.

Before me the undersigned E. T. Page, Notary Public in and for the County of Bowie, State of Texas, personally came and appeared Mrs. Mary G. Taylor, wife of L. A. Taylor, herein joined, aided and authorized by her husband who declared that she does by these presents, make, authorize, constitute and appoint M. G. Angell of the

Parish of Caddo, of State of Louisiana, true and lawful attorney in fact, for her and in her name, place and stead to sell, lease or otherwise convey for cash or upon terms of credit or for royalties from minerals or otherwise upon such conditions as said M. G. Angell may see fit, her interest in the following described property: northeast quarter of southwest quarter and northwest quarter of southwest quarter and southwest quarter of northwest quarter of section three, township twenty (20) Range Sixteen, Caddo Parish, Louisiana, and with full power to sign all papers, deeds, leases, etc., in her place and stead, giving and granting unto said M. G. Angell, attorney, full power and authority to do and perform all and every act and thing requisite and necessary in the premises, as fully, to all intents and purposes, as said appearers might or could do if she were personally present, with full
233 power of substitution and revocation, hereby ratifying and confirming any and all acts done by said agent and attorney, by virtue of this authority.

Done and passed in presence of attesting witnesses on this the seventh day of October, 1910.
Attest;

E. T. PAGE,
J. P. & Ex-Officio Notary Public
in and for Bowie Co., Texas.

Witness:
J. L. McCLOSKY.
MARY G. TAYLOR.

I hereby join, aid and authorize my wife.

his
L. A. x TAYLOR.
mark

State of Louisiana,
Parish of Caddo:

Before me, the undersigned W. A. Ellett, Notary Public in and for Caddo Parish, State of Louisiana, personally same and appeared Mrs. Georgia Angell, wife of M. G. Angell, joined, aided and authorized herein by her said husband who declared that she by these presents make, authorize, constitute and appoint Henry M. Russell, of the Parish of Caddo, State of Louisiana, true and lawful attorney in fact, for her and in her name place and stead to sell, lease or otherwise convey for cash or upon such terms of credit or for royalties from minerals or otherwise upon such condition as said Henry M. Russell may see fit her interest in the following described property: Northeast quarter of southwest quarter and northwest quarter of southwest quarter and southwest quarter of northwest quarter of section three, township twenty, range sixteen, Caddo Parish, Louisiana, and with full power to sign all papers, deeds, leases, etc., in her place and stead giving and granting unto said Henry M. Russell, attorney, full power and authority to do and perform all and every act and thing requisite and necessary in the premises, as fully to all intents and purposes, as said appearers might or could do if she were personally present, with full power of substitution and revo-
233 cation, hereby ratifying and confirming any and all acts done by said agent and attorney, by virtue of this authority.

Done and passed, in presence of attesting witnesses, on this the 7th day of October, 1910.

W. A. ELLETT,
Notary Public.

I hereby join, aid and authorize my wife herein.

M. G. ANGELL.
MRS. GEORGIA ANGELL.

Attest:

R. T. COLE,
H. R. HICKS.

Indorsed:—Filed and recorded. Oct. 17, 1910. S. O. Williams, Dy. Clerk. Con. Book 66, page 246.

State of Louisiana,
Parish of Caddo.

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appears on file and of record in my office.

Given under my hand and seal of office this the 6th day of May, 1918.

A. J. HARDIN,
(Seal) Deputy Clerk and Ex-Officio Deputy Recorder.

234 DFT. EX. 6.

No. 1153 Item 16.

R. B. Cook, Stenog.

State of Louisiana,
Parish of Caddo:

This contract, by and between the Board of Commissioners of the Caddo Levee District, of the State of Louisiana, Parish of Caddo, hereinafter styled first part, and C. W. Lane of Caddo Parish, hereinafter styled second party;

Witnesseth: That the first party, being owner in fee of the following property and lands, situated in the State of Louisiana, and Parish of Caddo, to-wit: All that tract or parcel of land described by metes and bounds, as follows: Beginning at the Northwest corner of the NW¼ of Section 3, T. 20 R. 16 Caddo Parish, La., run thence E. along the North line of said Section 3 to a stake on the traverse line of the Jeems Bayou; thence Southwardly, following the meanderings of said traverse line to the South line of the NW¼ of SW¼ of said Section 3; thence W. with the said South line to the W. line of said Section; thence N. with the said West line of Section 3, to the place of beginning, containing 63 1/5 acres of land, more or less.

And said first party hereby lets and leases to the Second party the lands and premises herein above described for the purpose of using and occupying the same, for drilling wells mining and exploring thereon and therein, or for oil, gas coal and other minerals and metals, or for the purpose of maintaining thereon such buildings machinery, pipe lines, storage tanks and other such structures that may be necessary for the conduct of said business by second party; and first party hereby warrants and defends this title to said land above described to said second party, his heirs and assigns, during the entire term of this lease. The said lease being granted upon the following terms and stipulations hereafter set forth.

For and in consideration of $1580.00 bonus paid by second part to first party, the receipt of which is hereby acknowledged, the said second party agrees and obligates himself to begin operations for drilling a well upon said premises within six months from June 1st, 1910,
235 and to continue with said operations with due diligence to the depth of the deep oil sand in

said locality unless oil, gas or other minerals, or metals in paying quantities, should be found at a lesser depth.

2. The royalties to be paid, are as follows:—For all oil produced and saved upon said premises, first party is to receive 1/8 up to and including 200 barrels per well per day, and 1/6 on all oil produced and saved from each well, in excess of 200 barrels per well per day.

3. For gas said first party is to receive $200.00 per annum from each gas well.

4. On all other minerals and metals produced and saved from said premises, first party shall receive 1/8 of the net proceeds derived from the sale thereof.

It is further agreed and understood between the parties hereto that in case second party shall fail and refuse to begin operations for drilling a well on the said premises within six months as herein above stated, then this lease shall become forfeited and void as to both parties hereto, said second party forfeiting the bonus paid, and there being no further recourse upon either party.

6. In case oil gas or other minerals or metals shall be discovered in paying quantities upon said premises, then this lease shall remain as long as the same may continue to be produced upon said premises.

7. It is further agreed and understood that upon the termination of this lease from whatsoever cause, second party shall have the right of removing from said premises all the pipes, machinery and property of whatever character placed thereon and therein.

8. It is further agreed and understood that this lease shall continue and be binding upon the heirs, successors, assigns and legal representatives of the parties hereto.

9. This lease is specially authorized by resolution of the said first party, a copy of which said resolution is hereto attached and made part hereof.

Executed at Shreveport, La., on this the 6th day of June A. D. 1910.

BOARD OF COMMISSIONERS OF
CADDO LEVEE DISTRICT.

236 By W. V. ROBSON, President, being duly authorized hereto.
C. W. LANE.

Witnesses:
W. A. KERLEY for Robson,
S. N. KERLEY for Lane.

237 State of Louisiana,
Parish of Caddo:

Before me, the undersigned authority on this day personally came and appeared W. V. Robson, President of the Board of Commissioners of Caddo Levee District, known to me to be the person whose name is subscribed to the foregoing instrument, and signed the same in my presence, and in the presence of the two Lawful witnesses, whose names are hereto attached, and acknowledged to me and the said witnesses that he executed the same for the purpose and consideration therein expressed, and in the capacity therein stated, as the act and deed of the said Commission of the said Caddo Levee District.

In faith whereof I have hereto set my hand and seal on this the 7th day of June A. D. 1910.

DAVID T. LANDY,
Notary Public in and for the Parish of Caddo. State of Louisiana.

Excerpt from Minutes of Meeting of Caddo Levee Board Held May 24th, 1910.

"In considering the foregoing bids in execution session, the following action was taken:

Mr. C. W. Lane's bid, after discussion, was amended to $25.00 per acre and a royalty of 1/8 on wells of 200 barrels and 1/6 on any excess,—On motion the above bid as amended was accepted and the President authorized to sign lease. The land to be surveyed and any excess of 60 acres to be paid for at same rate, and any shortage of 60 acres the lessee to be reimbursed at same rate."

A true copy.

S. N. KERLEY, Secty.

State of Louisiana Parish of Caddo:

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appears on file and of record in my office.

Given under my hand and seal of office this the 27th day of Mar. 1918.

THOS. J. CREEGER,
(Seal) Dy. Clerk and Ex-Officio Deputy Recorder.

Indorsed: Filed and recorded Con. Book 59 page 554 June 7, 1910. S. O. Williams, Dy. Clerk & Ex-Officio.

238 Item 17. Dft. Ex. 7.
1153. R. B. Cook, Stenog.

State of Louisiana,
Parish of Caddo:

This agreement made and entered into by and between Chas. W. Lane, and the Producers Oil Company, a corporation organized under the laws of Texas domiciled in Houston, Harris County Texas herein represented by its agent J. C. McCue.

Witnesseth: That for and in consideration of the sum of Six Thousand Three Hundred Dollars, cash in hand paid, receipt of which is hereby acknowledged and said other valuable considerations the said Lane does by this act, transfer and set over to the said Producers Oil Company, that certain lease by and between the Board of Commissioners of the Caddo Levee District and said C. W. Lane of date June 7th, 1910, and recorded in conveyance Book 59 page 554 of the records of Caddo Parish, La., the said property being fully described in the act of lease a copy of which is attached hereto and made a part hereof, and paraphed Ne Varietur by Frank J. Looney, Notary Public, to identify same herewith.

The Producers Oil Company assuming all obligations of the said lease consistent herewith, The Producers Oil Company agrees within four months from the first day of July 1910 to begin operations for drilling a well on the above property or surrender all rights thereby granted: and agrees to drill said well to the deep sand unless oil is found in paying quantities in said well at a lesser depth In the event of interference by adverse claimants the said

Lane agrees to secure from the Caddo Levee Board a further extension of time and to grant a reasonable extension of said lease. The Producers Oil Company further agree to develop said land in accordance with the rules governing such leases, taking into consideration the size of the tract and production on adjoining property. Should the Producers Oil Company on and after drilling the first well refuse to further develop the property it shall only be entitled to hold one-half of the tract leased and shall have the right to select same around and nearest
239 such well and the balance of the property shall be released from the operations of this lease and there shall be no recourse against either party. Said Lane agrees to defend the title to said land and, in event the Levee Board should not have a valid title to said land then said Lane agrees to return to the Producers Oil Company the sum of Six Thousand Three Hundred Dollars above receipted for and this contract shall terminate. It is further agreed that this contract shall terminate. It is further agreed that this contract shall extend to the heirs, executors, successors and assigns of the parties to this contract.

This done and signed, this the 30th day of June A. D 1910.

C. W. LANE,
PRODUCERS OIL COMPANY,
By J. C. McCUE, Agent.

Witnesses:
F. R. CHADICK,
W. R. THOMAS.

State of Louisiana,
Parish of Caddo.

Before me, the undersigned authority, on this day personally appeared C. W. Lane, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me, and the two attesting witnesses, that he executed same for the purposes and consideration on therein expressed.

Given under my hand and seal of office on this the 1st, day of July A. D. 1910.

E. BARNETT,
Notary Public Caddo Parish, Louisiana.

240 "Ne Varietur" as per act of transfer of lease of date June 30th, 1910,

FRANK J. LOONEY,
Notary Public.

State of Louisiana,
Parish of Caddo.

This contract, by and between the Board of Commissioners of the Caddo Levee District, of the State of Louisiana, Parish of Caddo, hereinafter styled first party, and C. W. Lane of Caddo Parish Louisiana, hereinafter styled second party.

Witnesseth: That the first part, being owner in fee, of the following property and lands, situated in the State of Louisiana, and Parish of Caddo, to-wit:

All that tract or parcel of land described by metes and bounds as follows; Beginning at the Northwest corner of the NW¼ of Section 3 T. 20 R. 16 Caddo Parish, La.,

run thence E. along the North line of said Section 3 to a stake on the traverse line of Jeems Bayou; thence southwardly following the meandering of said traverse line to south line of the NW¼ of SW¼ of said Sec. 3; thence W. with the said West line of Section 3, to the place of beginning, containing 63 1/5 acres of land, more or less.

And said first party hereby lets and leases to the second party the lands and premises herein above described for the purposes of using and occupying the same, for drilling well, mining and exploring thereon and therein, for oil gas coal and other minerals and metals, or for the purpose of maintaining thereon such buildings, machinery, pipe lines, storage tanks, and other such structures that may be necessary for the conduct of said business by second party and first party hereby warrants and defend as this title to said land above described to said second party, his heirs and assigns, during the entire term of this lease. The said lease being granted upon the following terms and stipulations hereinafter set forth for and in consideration of $1580.00 bonus paid by second party to first party, the receipt of which is hereby acknowledged; the said second party agrees and obligates himself to begin operations for drilling a well upon said premises
241 within six months from June 1st, 1910, and to continue with said operations with due diligence to the depth of the deep oil sand in said locality, unless oil gas or other minerals or metals in paying quantities, should be found at a lesser depth. 2,—The royalties to be paid are as follows: For all oil produced and saved upon said premises, first party is to receive 1/8 up to and including 200 barrels per well per day, and 1/6 on all oil produced and saved from each well, in excess of 200 barrels per day. 3,—For gas said first party is to receive $200.00 per annum from each gas well. 4. On all other minerals and metals produces and saved from said

premises, first party shall receive 1/8 of the net proceeds derived from the sale thereof. 5.—It is further agreed and understood between the parties hereto that in case second party shall fail and refuse to begin operations for drilling a well on said premises within six months, as herein above stated, then this lease shall become forfeited and void as to both parties hereto, said second party forfeiting the bonus paid, and there being no further recourse upon either party. 6.—In case oil gas or other minerals or metal shall be discovered in paying quantities upon said premises, then this lease shall remain as long as the same may continue to be produced upon said premises. 7.—It is further agreed and understood upon the termination of the lease from whatsoever cause, second party shall have the right of removing from said premises all the pipes, machinery and property of whatever character placed thereon and therein. 8. It is further agreed and understood that this lease shall continue and be binding upon the heirs, successors assigns, and legal representatives of the parties hereto. 9. This lease is specially authorized by resolution of said first party, a copy of which said resolution is hereto attached and made part hereof.

Executed at Shreveport, La., on this the 6th day of June A. D. 1910.

Board of Commissioners, Caddo Levee District W. V. Robson, President, being duly authorized hereto.

C. W. LANE.

Witnesses:
W. A. KERLEY for Robson,
S. N. KERLEY for Lane.

242 State of Louisiana,
Parish of Caddo:

Before me the undersigned authority on this day personally came and appeared W. V. Robson, President of the Board of Commissioners of the Caddo Levee District, known to me to be the person whose name is subscribed to the foregoing instrument and signed the same in my presence, and in the presence of the two lawful witnesses, whose names are hereto attached, and acknowledged to me and the said witnesses that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated, as the act and deed of the said Commissions of the said Caddo Levee District.

In faith whereof I have hereto set my hand and seal on this the 7 day of June A. D. 1910.

DAVID T. LAND,
Notary Public in and for the Parish of Caddo State of Louisiana.

Excerpt from the minutes of Meeting of Caddo Levee Board held May 24, 1910.

In consideration of the foregoing bids in executive session the following action was taken; C. W. Lane bid after discussion, was amended to $25.00 per acre and a royalty of 1/8 on wells of 200 barrels and 1/6 on any excess. On motion the above bid was amended was accepted and the President authorized to sign lease. The land to be surveyed and any excess of 60 acres to be paid for at the same rate and any shortage of acres the lessee to be reimbursed at same rate.

A true copy.

S. N. KERLEY, Secty.

Indorsed:

Filed and recorded June 7, 1910. S. O. Williams Dy Clerk & Ex-Officio Dy Recorder.

State of Louisiana,
Parish of Caddo:

I hereby certify that the above and foregoing is a true and correct copy of the original act as the same now appears on file and of record in my office in Con Book 59 page 554.

243 Given under my hand and seal of office this 1 day of July 1910.

S. O. WILLIAMS,
Dy. Clerk & Ex Officio Dy. Recorder.

Indorsed:

Filed and recorded, July 2, 1910. S. O. Williams, Dy. Clerk & Ex- Officio Rec. Con. Book 59 page 675.

State of Louisiana,
Parish of Caddo:

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appears on file and of record in my office.

Given under my hand and seal of office this the 18th day of April, 1918.

A. J. HARDIN,
Deputy Clerk and Ex-Officio Deputy Recorder.

244 Dft. Ex. 8.

R. B. COOK, Stenog.

The State of Louisiana,
Parish of Caddo.

This Agreement witnesseth, that the Producers Oil Company have this day received from C. W. Lane, a transfer of a lease made by the Caddo Levee Board to said Lane and recorded in Conveyance Book 59, page 554, of the records of Caddo Parish, La.

That said transfer was made for Six Thousand Three Hundred Dollars, and other consideration.

It is now mutually agreed that said other consideration is as follows:—The Producers Oil Company agrees to deliver the one-twenty-fourth part of all the oil produced and saved off the premises wherever any well drilled produces two hundred barrels per day or less, and one-twelfth part of the excess produced and saved over two hundred barrels, this to apply to the production out of each well, and not to the average production of several wells.

This done and signed this the 30th day of June, 1910, in the presence of the two attesting witnesses.

(Signed) C. W. LANE,
PRODUCERS OIL COMPANY.
(Signed) By J. C. McCUE, Agent.

Witnesses:—
(Signed) F. R. CHADICK.
(Signed) W. R. THOMAS.

245 (DEFENDANT'S EXHIBIT NO. 8—Agreement between C. W. Lane and Producers Oil Company as to royalties).

States of Louisiana,
Parish of Caddo:

This agreement witnesseth, that the Producers Oil Company have this day received from C. W. Lane, a transfer of a lease made by the Caddo Levee Board to said Lane and recorded in Conveyance Book 59, page 554, of the records of Caddo Parish, La.

That said transfer was made for Six Thousand Three Hundred Dollars, and other consideration.

It is now mutually agreed that said other consideration is as follows: The Producers Oil Company agrees to deliver the one-twenty-fourth part of all the oil produced and saved off the premises wherever any well drilled produces two hundred barrels per day or less, and one-twelfth part of the excess produced and saved over two hundred barrels, this to apply to the production out of each well, and not to the average production of several wells.

This done and signed this the 30th day of June, 1910, in the presence of the two attesting witnesses.

(Signed) C. W. LANE,
PRODUCERS OIL COMPANY
(Signed) By J. C. McCUE, Agent.

Witnesses:—
(Signed) F. R. CHADRICK.
(Signed) W. R. THOMAS.

Filed Jan. 27, 1919.

246 (No. 1153).

DEFENDANT'S EXHIBIT NO. 1.

SUMMARY.

	Barrels	Amount.
Total oil run from Well No. 3 for the time said well was operated separately.	33,658.84	$26,200 92
Oil apportioned to Well No. 3 for the time wells Nos. 1 & 3 were operated jointly,	75.52	52.86
Oil apportioned to Well No. 3 for the time wells Nos. 1-3 & 4 were operated jointly	9,000.87	10,176.95
Total estimated production from Well No. 3,	42,735.23	$36,430.73
Approximated royalty to C. W. Lane from Well No. 3, including amount held in suspense by The Texas Company, as shown by statement attached to and filed with its answer,	$1,517.95	
Approximated royalty to Board of Commissioners of Caddo Levee District, from Well No. 3, including amount held in suspense by the Texas Company, as shown by statement attached to and filed with its answer,	$1,517.95	
Approximated amount of Producers Oil Company's interest in production from Well No. 3,	$30,358.94	$36,430.73

Approximated amount of Producers Oil Company's interest as shown above,		$30,358.94
Counter Claim:		
Cost of drilling Well No. 3, as shown by statement, Exhibit "C" attached to and filed with Producers Oil Company's answer	$8,733.25	
Cost of operating Well No. 3, as shown by statement, Exhibit "C" attached to and filed with Producers Oil Company's answer,	8,383.50	
	$17,116.75	
Less credit for salvage,	1,069.20	16,047.50
Estimated net proceeds from Well No. 3, after deduction of costs for drilling and operation,		$14,311.74

Filed Jan. 27, 1919.

247 (REPORT AND FINDINGS OF SPECIAL MASTER).

In United States District Court, Western District of Louisiana.

Nos. 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1162, 1163, 1164, 1165, 1167, 1168, 1170, 1171, 1172.

To the Honorable Rufus E. Foster, Judge, U. S. District Court, Western District of Louisiana:

May It Please Your Honor:

Having been appointed by Your Honor Master in Chancery in the above cases to take the evidence and

report findings and conclusions of law thereon, and after having heard the testimony and arguments of counsel, I beg to make this my report. In considering the two cases I have found they naturally group themselves into two classes which I have designated as class "A" and class "B."

Class "A" includes the following cases:

United States vs. C. W. Lane, et al, No. 1153.

United States vs. Chas. J. Green, Jr., et al, No. 1155.

United States vs. Jeems Bayou Hunting & Fishing Club, et al, No. 1157.

United States vs. Gulf Refining Company of Louisiana, No. 1158.

United States vs. W. H. Enders, et al, No. 1160.

United States vs. Southwestern Gas & Electric Company, et al, No. 1162.

United States vs. J. M. Walling, et al, No. 1163.

United States vs. Mrs. Jessie M. La Robadierre, et al, No. 1164.

United States vs. A. C. Loucks, et al, No. 1165.

Class "B" includes the following cases:

United States vs. W. W. Green, et al, No. 1154.

United States vs. Henry Hunsicker, et al, No. 1156.

United States vs. Arkansas Natural Gas Co., et al, No. 1159.

United States vs. R. B. Norvell, et al, No. 1167.

United States vs. W. H. Mathews, et al, No. 1168.

United States vs. Dillard P. Eubank, et al, No. 1170.

United States vs. Mrs. Lydia H. McMullen, et al, No. 1171.

United States vs. Sam Mason, et al, No. 1172.

In Class "A" the defendants deny the title of the United States. In Class "B" they admit the title to the lands in dispute are still in the United States, but set up that they in due course according to law
248 made mineral locations thereon of which they cannot be divested.

First in consideration I take up Class "A" suits of which the case of United States vs. Jeems Bayou Hunting & Fishing Club, et al, No. 1157, is most typical of the contentions raised by the United States and the defendant in Class "A" suits. Concisely stated in the class "A" suits the contention of the United States is that the ownership of the lands in dispute has never at any time passed from it; that in point of fact they were in the category of unsurveyed public lands until December, 1916, and that since that survey no alienation has been made by the government and that defendants are without any muniment of title.

On the contrary the defendants deny that the lands were in the catigory of unsurveyed lands prior to March 1917 and aver that prior to that date, to-wit: 1839, their lands were surveyed by A. M. Warren, Deputy United States Surveyor, mapped and filed in the Federal Land Office, the land sold and United States Patent issued therefor, and that the defendants have good title derived by mesne conveyances from the original patentees. In the survey of 1839 of Township 20, the government claims that the surveyor left out of the survey 987.77 acres, 248.87 acres of which is involved herein and to which the government claims defendant has no title. The above are the out-standing contentions. There lands are all border lands lying on Ferry Lake and are all in Township 20, Range 16 West Louisiana Meridian, and lie in the following sections of said township, to-wit: three, four, five, eight, nine, ten, twelve, thirteen,

fifteen, sixteen, twenty-three, twenty-four, twenty-five, twenty-seven and thirty-two.

In addition to the above general statements of the issues made by defendant there are in the pleadings such issues as denial of the right to make a re-survey of Township 20 on the ground that the order therefor directs the survey from Range 10 to Range 11, which is not inclusive of range 16; also that lands in controversy were in character swamps and passed to the State; and that the alleged unsurveyed lands in this township lying on the Lake, were formed by relictions and passed to the defendant holders as riparian proprie-
249 tors.

Altho such contensions were set up by defendants pleadings they were as the trial progressed, in a number of the cases, practically abandoned and the controversy settled down on the pivot of whether the lands in controversy, at the time in 1839 when a survey of this township was made by the government were in point of fact included; or if not in point of fact included in the 1839 survey, yet the government should be held, as respects defendants and their authors in title, in law as virtually having thru its own surveyor and his maps held out that all lands in question at that date were included, and therefore should not be permitted at this date to revise its representation thru its surveyor and maps to the prejudice of defendant, even tho the lands in controversy were in place and not included in map. This would reduce the controversy to a question of law. To make this clear I will take up the cases seriatim and first the case No. 1157 of United States vs. Jeems Bayou Hunting & Fishing Club, et al, as being the most illustrative of the contentions.

United States

vs. No. 1157.

Jeems Bayou Hunting and Fishing Club, et al.

This case involves lots 8, 9 and 10 aggregating 85.22 acres of Section 10, Twp. 20, N. R. 16 West and is shown on plat No. 11 of plaintiff's offering, colored red. This plat is called a supplemental plat of Twp. 20 N. Range 16 West made by A. D. Kidder and associates, United States Surveyor in 1916, and approved Marcy [March] 28, 1917. This same plat illustrates the government contention that the original survey of this township 20 by Warren, Government Surveyor in 1839 (Warren's map being plaintiff's offer 3, filed in evidence) omitted 565.98 acres of land which were in place at the time and omitted by Warren and therefore, as the Government contends, remained legally as unsurveyed Government Land even after Warren made his map (p. 3) and returned it with his field notes to the surveyor general's office. The omitted areas are shown on Plat 11 and appear all around the
250 border of Terry Lake, but the greatest area omitted by Warren in the original survey lies in Sec. 10. As stated already the original survey and maps of this land by the government was by Warren in 1839 and a replica of this map is in evidence (P. 3). This survey shows the area in the southwest fractional quarter, Sec. 10, as containing 55.88 acres and represents section 9 lying west of section 10 as being no land at all. As a matter of fact subsequent surveys made by Bristol in 1871 and by Kidder in 1916 confirmed the fact that at the time of Warren's survey the part of Sec. 10 represented on his map as rather a long and narrow peninsular and as containing 55.88 acres actually contained 129.60 acres additional and that Warren's

map showing section 9, lying west of section 10 as water, actually had at that time 66.29 acres, entirely omitted from Warren's survey and 28.33 acres in Section 16 which Warren's survey and map ignores altogether.

This brings me to the consideration of the fact claimed by the Government, to-wit: Were the lands in section 10 aggregating 129.60 acres, in section 9 aggregating 66.29 and in section 16 aggregating 28.33 acres actually in esse as high lands at the time of Warren's survey. To determine this matter the United States Government ordered a resurvey in 1913 and 1914 and an extension survey in 1916 and 1917 of the lands in township 20, Range 16 West. This work was done under their instructions by Arthur D. Kidder, supervisor of surveys. The re-survey was made in 1913 and 1914 and the extension survey in 1916 and 1917. In the course of this survey Mr. Kidder and his associates re-established and reproduced the survey made by Warren in Township 20 N. R. 16 West and made the official plats and maps herein filed (all approved by the department of the Government Land Office). On the trial before me, it is specially admitted in suits herein Nos. 1153, 1158, 1162, 1163, and 1164 that these surveys, maps and plats by Kidder were executed according to the instructions of the Government Land Office and that such plats correctly re-established and reproduced the survey made by Warren in Township 20, N. R. 16 West in strict accordance with the original survey.

Altho in this suit there is no admission in the record to the same effect, yet in the arguments, oral and in brief, there is no attack on the accuracy of the
251 map of Kidder. Much interesting testimony was adduced by the Government to prove its

contention that the lands in these suits were in actual place as high lands when Warren made his survey but were ignored by Warren in making his survey and treated as non-existant by him and also to prove that in the section to the west and south where Warren's map and field notes represent that the shore of Ferry Lake lay, there was in point of fact high lands with the actual shore line distant 2700 and 2500 feet at furthest and 725 to 990 feet nearest.

This testimony was furnished not only by Kidder and his associates who actually did the work, but also by three distinguished scientists, one a Geologist, Prof. Frank Leverett of the University of Michigan, and two geologists, Prof. Lionel J. James of the Dept. of Agriculture of the United States and Dr. Henry C. Contes, Professor of Plant Ecology in the University of Chicago.

One of the first things to determine in reproducing the Warren survey and to show the exact status of the land and water at that period and the period of 1812 when Louisiana came into the Union was to determine the mean high water mark of the Ferry Lake at that period or the contour line, as it is called, of the lake.

This was done by a study of the wave action on the border of the lake by the Geologist which consisted of shore marks and also of a study of the soil in the bed of the lake and on the upland borders; also by a study of the tree growth on the shore and the lake and the various timber belts on the shore consisting of cypress; above this, overcup oaks and other trees which would not grow upon lands permanently covered by water. In this recognizance work they directed stakes to be set at the margin between the cypress timber and overcup oaks. It is established by Kidder's testimony that the high water elevation of Ferry Lake in 1839 (the date of Warren's survey) and in 1812 when Louisiana was admitted into the Union, was 173.09 feet above gulf

level. Certain birth marks as to the high water elevation of Ferry Lake with reference to the Gulf Level (or sea level) have been established by Army Engineers on Red River and in this township 20 dating 252 back as far as ..... and these were identified and used by Kidder in locating the 173.09 contour of the lake and the contour actually made by the surveyors around the entire border of Ferry Lake. When this contour was made it was found to practically coincide with 173.09 acres high water level already independently located and staked by the Geologist and Ecologists. It was also found that Warren's survey was actually made by him with reference to this same level and contour. In returning the lines of Warren's survey following Warren's field notes and directions, Kidder found that in the termination of all the section lines to the lake shore Warren had stopped at the 173.09 level and also that in retracing many of Warren's meander lines on the border of the lake, he (Warren) had run them either exactly or approximately on the 173.09 contour (which had already been located and worked out by Kidder and the scientists as the shore before the above verification by Warren's own date). The 173.09 contour is confirmed by the Louisiana-Texas Boundary Commission in 1841; also by Moore's survey in 1846 and Boyd's survey of 1854, dealing with certain other lands on Ferry Lake.

A more detailed reference to the evidence and discussion thereof on this point might be made, but the fact that Warren recognized the 173.09 elevation as existing at the time of his survey is expressly made in the suits herein, Nos. 1153, 1158, 1162, 1163, and 1164, and is not seriously denied, since all evidence is in, by the other defendant litigants. The admission on this matter finally made in the above suits is as follows:

"2. That the contour line of 173.09 feet above Gulf level established by the said Arthur D. Kidder, Supervisor of Surveys, as the mean high water elevation of Ferry Lake in 1812 when Louisiana was admitted into the Union, and in 1839 when A. W. Warren made his survey of Township 20, North of Range 16 West, was in reality the mean high water elevation of Ferry Lake and James Bayou, at such dates, and that the meander line of Ferry Lake and James Bayou, as run by said Kidder, follows said contour of 173.09 feet.

"3. That all of the tracts in controversy in these suits lie above the mean high water elevation of Ferry Lake as it existed in 1812 and 1839.

253 "4. That the various tracts of land lying between the meander line of Ferry Lake and James Bayou as run by the said Arthur D. Kidder, and the line represented as a meander line upon the plat of said original Warren's survey, hereinabove referred to, including the tracts in controversy in these consolidated causes, were in 1812 and 1839, at all times since said date, and now are, lands in place and of the same character, geological formation, and quality, as the lands surveyed by said Warren, as aforesaid, that said tracts of land are now and were in 1812 and 1839, and at all times since said dates, what is known in this locality as hill land, covered with native forest trees and vegetation characteristic of hill land, and that all of said lands were at the dates mentioned and at all times subsequent thereto uplands in character and existed as such at the time of the said Warren's survey and in 1812.

"5. That the various tracts of land embraced in the extension survey of the said Arthur D. Kidder,

Supervisor of Surveys, and represented upon the plats aforesaid, including the property in controversy in these consolidated causes, were not formed by accretion, or by the recession or reliction of the waters of Ferry Lake or James Bayou since 1812." (See stipulation of counsel in cases mentioned, pages 2 and 3.)

On their basis of 173.09, Kidder and his associates were able by taking Warren's field notes, to track him over the exact terrain which he walked in 1839 and found beyond a doubt in this section that when Warren reached nearly the point of the land shown on his map as a narrow peninsula in the southwest quarter of section 10 in township 20, north range 16 west, he carelessly left the shore line of the lake, running a short distance to the west on a line through highlands well timbered, leaving the lake shore 725 feet south of him and then turning approximately north, ran his line through high lands without reference to the actual shore line of the lake which in point of fact was at that time at least 2770 feet to the west of his survey. By so doing he ignored the presence of the land in question in this suit which at that time was in place and most of it seven feet higher than the land actually surveyed by him and made a map showing 55.88 acres as containing all the land in the alleged southwest fractional quarter of section 10. This is well illustrated by map 31 of plaintiff in evidence. The land so omitted was topographically surveyed, its elevations taken by
254 Kidder and associates and map of it shows it to have been even above the 180 foot contour (which was the high water stage at that period of Red River and Ferry Lake) and none of it below the 173.09 level on which Warren based his survey.

It is also, by the scientists already mentioned, proven that this land so left out by Warren was at the time

of his survey well timbered high land with a growth on it of pine, oak and red gum, etc. It is proven by the scientists that this same sort of growth was in this land as far back as 1800. From a comparison of Warren's map, plaintiff 3, in evidence, with Kidder's survey as shown by Map 31 Plaintiff's evidence, page 9, it is apparent that the little peninsula mentioned by Warren as the fractional southwest quarter of section ten does not represent either the area or shape of the land, certainly in place at the time of his survey—nor does it even approximate the real area and shape. It is impossible to accept his southern or western line as a real meander of the shore. It will be seen from map 31 of Plaintiff's evidence that the lots involved in this suit are far from the total area omitted by Warren in his survey of the western fractional one-half of section ten. The area of the land is 85.22 acres; the other lands omitted by Warren from his survey in this point approximate 118.46 acres plus a body of land lying north of the above land aggregating 280.87 acres surveyed by Bristol in 1871, all of which Warren's map returns as lake.

I find therefore as a fact that this land in question was and is not alluvial nor swamp nor overflowed nor formed by retection, recession or accretion but it was high lands in place in 1812 and 1839.

I find also as a fact that the land in question was not surveyed by Warren in 1839 and should be classed in the catigory of unsurveyed public lands of the United States prior to the survey made by Kidder unless the defense set up by defendant shows a divestiture of the ownership of the government since the Warren survey.

The defendant, the Producers Oil Company, claim under a lease from the Jeems Bayou Hunting & Fishing Club, in 1910, and put down the oil wells on this land (the

Texas Company bought the oil produced
255 therefrom from the Producers Oil Co.) The Producers Oil Company therefore is bound to defend the title of the Jeems Bayou Hunting & Fishing Club. A consideration of the same and the special defenses set up is now in order.

The United States issued to S. D. Pitts on April 2, 1860, a patent "to the Fractional Southwest quarter of Township 20, N. R. 16 West, according to the official field notes and plot of survey in the Government Land Office." The Patent stated the land conveyed was 23 acres. As a matter of fact Warren's map represents the fractional southwest quarter of section 10, containing 55.88 acres (there is a suggestion that Pitts actually intended to buy the southeast quarter of this section which is shown by Warren's map as containing 23 acres.)

But inasmuch as the title calls for the Southwest quarter, this fractional southwest quarter according to Warren's field notes and directions actually contained approximately 48 acres (the volume of the 55.88 acres and about 7 acres as shown by Warren's map in this peninsular being in the northwest quarter of Section 10). Pitts got the patent and paid for 23 acres.

As stated in the outset in this opinion, the lots or land in controversy here were not as a matter of fact embrased within the Warren line but lie entirely out of the 48 acres which Pitts actually took under the Warren survey. The Jeems Bayou Hunting & Fishing Club purchased from Pitts and succeeded to all the rights under his patent, no more and no less.

Certain preliminary defenses in this and the other cases were passed on by your Honor and rejected. The contentions in the pleadings that the land in question was swamp and overflowed land and that it was uncovered by a recession of the water and belonged to

Pitts and his succession in title as Reparian owners is not pressed; in fact, the James Bayou Hunting & Fishing Club in a suit No. 17707 on the Docket of the District Court, Caddo Parish vs. Levee Board, denied that the land in controversy was ever swamp or overflowed land and also denies "that the same has been formed either in whole or in part since its survey in
256 the long ago." In other words, an admission that the land in dispute was actually in place as high land when Warren made his survey in 1839.

As above stated, I have already concluded that the land in dispute was in place as high land (equally as high and most of it higher than the land actually surveyed by Warren) when Warren made his survey and I have also found that Warren did not actually survey this land and that his survey which purports to show a narrow peninsula at no point over 400 feet wide with the lake on its western and northwestern boundary in point of fact was not true, that the lake at the time of his survey was over half a mile away and at its nearest point on the south 725 feet distant; besides there were lands in this section and section 3 subsequently surveyed by Boyd and Bristol, which shows in Warren's map as water, which was actually high land in place, aggregating the whole 370.56 acres. In Warren's survey in this township, a grand total of 987.77 acres of high land in place at the date of his survey is shown to have been omitted from his map. Considering this to be true, defendants argue that the Government should be estopped from denying the verity of Warren's map at any time after third parties have bought, much less at this late day.

This leads to the law question involved. After a review of the authorities my opinion is that the Government is not estopped when it is satisfied that there was manifest error or material variation between the tra-

verse line of the Lake represented on a map and the true border of the Lake; but may order a resurvey and treat the land omitted from the first survey, as public land, which has never been surveyed from the public domain.

The Supreme Court of the United States in 142 U. S., 161, states the law thus: as to the rights of the Government when it believes there is error or fraud in the surveys already made: "The power to make and correct surveys of public lands belongs exclusively to the political department of the Government and the action of that department is unassailable in the Court except by direct proceedings." D. 189 U. S. 35—Do 168 U. S. 589.

The case in 189 U. S. Kernan vs. Murphy,
257 is directly in point, a survey was made by Howe, the U. S. Surveyor, where the meander line was at a considerable distance from a lake. The lake, in fact, existed, but not at the place represented on the plat. The result of the false meander was the omission of a large body of land between the so-called meander and the lake. The department ordered a new survey (as in the case at bar) and parties claiming the omitted body of land enjoined the execution of the survey, but the Court rejected the injunction holding that the department not only has the power to make correction surveys, but "It must primarily determine what are public lands subject to survey and disposal." In a recent case decided by the Supreme Court of the United States, Lee Wilson & Co. vs. U. S., 245 U. S. 24, it is announced: "If in the making of a survey of public lands, an area is through fraud or mistake meanded as a body of water or lake where no such body of water exists, riparian rights do not accrue to the surrounding lands and the land department, upon discovering the error, has power to deal with the meandered area, to

cause it to be surveyed and lawfully to dispose of it. Altho the general rule is that a meander line is not usually one of boundary yet this meander line must have certain requirements stated below, and if it does not have those requirements it is a boundary line.

The case of Producers Oil Co. vs. Hanszen, first decided in the Supreme Court of Louisiana, 132 La. 691, and affirmed in the Supreme Court of the United States in 238 U. S. 325, settles the question as to whether Warren's so called meander line in his survey of the southwest quarter of Sec. 10, Twp. 20, R. 16 (the land herein involved lying in that quarter section and actually in place in 1812 and 1839, as now) is to be treated as a true meander line, or whether it must be treated as a boundary line limiting the patentee to the actual area within the boundary. Both the Supreme Court of Louisiana and the Supreme Court of the United States decided that a surveyor's traverse fails in all respects as a meander line when it was made without regard to a body of water, and does
258 not approximate its contour, or when substantial areas throughout the twp. lying between the so-called meander line and the body of water which it pretends to deliniate, have been omitted. In either case the traverse is a boundary of the adjoining patented lands and reparian rights do not accrue. Tested by this the so-called meander line established by Warren of this section, as above described, does not meet any of the requirements set forth by the Supreme Court of the United States, because:

(1) It is (at the point under discussion) not "an accurate survey of the meanderings of the watercourse."

(2) It does not show "the place of the watercourse and its sinuosities.

(3) It does not "define the sinuosities of the banks or the water."

(4) It is false, erroneous and misleading in that it does not afford any reliable means "of ascertaining the quantity of the land in the fraction, subject to sale, and which is to be paid for by the purchaser," 7 Wallace 272, R. R. Co. vs. Schumier. In 159 U. S., page 40, Howe vs. Smith, it is held that "It is unnecessary to speculate why it was that the surveyor (Warren in the case at bar) did not survey the omitted land; it may have been a mere oversight, but whatever the reason, the fact is obvious that no survey was made of that body of land." "Altho it was unsurveyed it does not follow that a patent for the surveyed tract (herein the Pitts patent) adjoining, carries with it the land which, perhaps, ought to have been, but which was not in fact surveyed. The patent conveys only the land which is surveyed, and it is clear from the plat and the survey (i. e., the field notes, etc.) that the tract surveyed terminated at a point other than the real bank of the river as the patent carries no land beyond the terminal fixed by the surveyor."

The land actually purchased and paid for by Pitts (as above stated he actually got more than he paid for) was conveyed and covered by the description of courses and distances set forth in Warren's field notes and referred to in the Pitts patent, and the
259 United States is concluded as to such land. Giving the Patentee all of the land in areas stated in the patent and described and contained in lines and distances in such patent and which is all he paid for, protects him and his succession in title and the government should not be concluded by the fraudulent or gross negligence of its surveyor, 193 U. S. 167, Security Land & Ex. Co. vs. Burns (in that case the real

lake or water at the point in question was about half a mile away from the pretended meander.)

Again 232 U. S. 452, Gautier vs. Marian, "If the area in question designated and meandered as a lake, was in truth high land susceptible of cultivation, it was as much public lands after the survey as if its true character had been reported by the surveyor, it was merely left unsurveyed (in that case there was no reference in the field notes or plat to the omitted areas) Do. 175 U. S. 300, 185 U. S. 50. In 232 U. S. 186-7, Chapman & Dewey L. Co. vs. St. Francis Levee Dist., "these public lands are patented as to the official plat of the surveyor returned to the Government Land Office by surveyors, but the notes, lines, landmarks and other particulars appearing on the plat must be considered in interpreting the patent.

The last expression of the Supreme Court in the above case of Wilson & Company vs. U. S. 245, U. S. 24, definitely settle the substantial point in controversy here. "If in the maps of a survey of public lands, some area is through fraud or mistake meandered as a body of water or lake where no such body of water exists, reparian rights do not accrue to the surrounding lands, and the land department upon discovering the error has the power to deal with the meandered area, to cause it to be surveyed and lawfully to dispose of it."

It is impossible therefore to escape the legal conclusion that lots contended for herein must be held to be public government lands, the property of the United States and that neither Pitts under his patent, nor the Jeems Bayou Hunting & Fishing Club nor its
260 lessee the oil companies have any title thereto. So holding, it remains to consider the claims of the government for the oil and other minerals taken therefrom and the form of judgment that should be rendered against the defendant. The Government

contends that it is entitled to recover the value of oil extracted from the lots by the defendants on the theory that they are all wilfull trespassers and that the general rule is that the measure of damages for a tortious conversion is the value of the property converted with interest. My conclusion is that defendants herein are innocent of any intent to do wrong and therefore the costs of extracting the oil and other minerals should be allowed, this embraces the cost of drilling and completing the wells and the cost of administering same in order to deliver the oil at the surface for delivery into commerce. This is the rule announced by our own Supreme Court in the case of Cook vs. Gulf Refining Co., 135 La. 609, and satisfies the equitable principle that no man should enrich himself at the expense of others.

Commonly speaking minerals cannot be approved until brought to the surface and the true owner should undoubtedly be awarded their value at that stage but not until the labor and expense of the person doing the work of bringing them from the bonds of the earth have been allowed where this person is acting in moral good faith tho under a mistaken idea as to the true conditions of the title. On this basis I think the government may recover not only from the oil company, defendants, who developed and brought to the surface the oil, but also from the marketing company who received the oil at the well from the producing company and also from the persons to whom royalties were paid to the extent of such payment, C. C. of La., 2452, Thornton vs. Oil & Gas Co., page 43; 135 La. 990, Elder vs. Ellerbe.

Since all the evidence was put in there is no dispute as to the amount of the oil extracted and marketed from the wells up to June 30, 1917, inclusive. I find as a fact that the amount of oil so extracted by the Pro-

ducers Oil Co. and delivered to the Texas Company up to June 30, 1917 inclusive, to be 247,348.27 barrels and that its value at the time of the extraction was $293,-234.18.

I find that the cost of drilling and equipping the wells, operating same and delivering the oil at
261 the surface, to be $113,912.45. The difference between these two items is $179,321.73, representing the net value of the production. Of this amount the Producers Oil Co., paid to the Jeems Bayou Fishing & Hunting Club $36,654.27 as royalties, leaving the Producers Oil Co. and the Texas Company the net amount of $142,667.46. These amounts must be returned to the true owner of the land, the United States.

I therefore recommend:

1. That the land in question be decreed to be the property of the United States.

2. That defendants be permanently estopped from transferring on same, or removing any oil or other minerals therefrom, and that they deliver the property to the United States and that the lease of said land by the defendants, Jeems Bayou Hunting & Fishing Club and the Producers Oil Company be annulled.

3. That the United States recover from the Producers Oil Co., and the Texas Company in solido, $142,-667.46.

4. That the United States recover from the Producers Oil Co., the Texas Company and the Jeems Bayou Hunting & Fishing Club, in solido, the sum of $36,654.27 for royalties paid by the said club.

5. I recommend further that the rights of the Government be recovered from defendants of the value of

all oil produced from the wells on the land since June 30, 1917 inclusive.

No. 1153, United States vs. Lane, et al.
No. 1158, United States vs. Gulf Refining Co., of La.
No. 1162, United States vs. Southwestern Gas & Electric Co., et al.
No. 1163, United States vs. J. M. Walling, et al.
No. 1164, United States vs. Robediere, et al.

The above cases were consolidated for the purposes of trial and the following stipulations of fact were made by counsel for both sides.

1. "That the surveys made herein by Arthur D. Kidder, Supervisor of Surveys, and his associates and assistants, were made under instructions issued by the Commissioner of the General Land Office, as shown by letters of date September 27, 1913, and of December 1, 1916, from Clay Tallman, Commissioner of the General Land Office, to the said Arthur D. Kidder, Supervisor of Surveys, which will be offered in evidence herein by plaintiff, and that said surveys were made conformably to said instructions; that the surveys referred to herein are represented by certain official plats approved July 24, 1916, and March 28, 1917, which will be offered in evidence by plaintiff; that the plats made by the said Arthur D. Kidder, or under his supervision hereinabove referred to, correctly depict the surveys as made by him, and that all the figures, measurements, courses, distances, elevations and topographic features shown on said plats are correct. It is also admitted that the said Arthur D. Kidder, Supervisor of Surveys,
262 correctly re-established and reproduced the survey made by A. W. Warren, Deputy Surveyor, of Township 20, North of Range 16 West, in strict accordance with the said original Warren survey,

the said original survey being represented upon the official plat approved August 31, 1839.

2. That the contour line of 173.09 feet above mean Gulf level, established by the said Arthur D. Kidder, Supervisor of Surveys, as the mean high water elevation of Ferry Lake in 1812, when the State of Louisiana was admitted into the Union, and in 1839 when A. W. Warren made his survey of Township 20, North of Range 16 West, was in reality the mean high water elevation of Ferry Lake and James Bayou, at such dates, and that the meander line of Ferry Lake and James Bayou as run by said Kidder follows said contour of 173.09.

3. That all of the tracts in controversy in these suits lie above the mean high water elevation of Ferry Lake as it existed in 1812, and 1839.

4. That the various tracts of land lying between the meander line of Ferry Lake and James Bayou as run by the said Arthur D. Kidder, and the line represented as a meander line upon the plat of said original Warren survey hereinabove referred to, including the tracts in controversy in these consolidated causes were in 1812 and in 1839, at all times since said dates, and now are lands in place and of the same character, geological formation; and quality as the lands surveyed by said Warren, as aforesaid; that said tracts of land are now and were in 1812 and 1839 and at all times since said dates, what is known in this locality as hill land covered with native forest trees and vegetation characteristic of hill land, and that all of said lands were at the dates mentioned and at all times subsequent thereto, uplands in character and existed as such at the time of the said Warren survey and in 1812.

5. That the various tracts of land embraced in the extension survey of said Arthur D. Kidder, Supervisor of Surveys, and represented upon the plats aforesaid, including the property in controversy in these consolidated causes, were not formed by accretion, or by the recession, or reliction of the waters of Ferry Lake or James Bayou since 1812.

6. That Ferry Lake is and was in 1812 and 1839 a navigable body of water.

7. This stipulation shall not be construed as an admission upon the part of defendants that the land in controversy were not included within the survey made by A. W. Warren, as a matter of law; the defendants contending that under the Warren survey their titles extended to mean high water elevation.

8. Plaintiffs and defendants shall have the right to offer evidence in these causes, and these admissions shall not be construed as preventing them, or any of them, from introducing additional evidence."

The total area involved in these suits is 79.95 acres. The Lane case involves Lot 1 of Sec. 3, T. 20, N. R. 16 West and contains 5.67 acres. The Gulf Refining Company of La. involves 11.49 acres. The Southwestern Gas & Electric Co., involves 27.87 acres. The Walling case involves 12.72 acres. The LaRobediere case involves 22.20 acres.

It will be seen from the above stipulation that the land involved was of the same character as that in the Jeems Bayou Hunting & Fishing Club, i. e.,
263 high land with high land timber growth, never at any time a part of the bed of the lake, but really the same quality and character of land as that actually within the Warren Survey.

It is also admitted that Kidder's survey in retracing Warren's work is correct; and from this follows the admission that the various areas contended for shown as a result of Kidder's reproduction of Warren's work, are correctly set forth, totalling 79.95 acres which were actually left out between the mean high water mark of the Lake and Warren's line. These admissions, which correspond with the evidence which overwhelmingly proved the fact; put the cases in the same catigory it would seem, with the Jeems Bayou Hunting & Fishing Club wherein a finding in favor of the Government has just been made. Defendants, however, while conceding the above fact, contends these cases should be differentiated from the Jeems Bayou Hunting & Fishing Club case because the areas involved in each of these cases are comparatively very small and that the maxim de minimis lex non curat should apply.

They contend that in these particular cases the lines run by Warren are substantially meander lines, admitting that, as contended for by plaintiff, at some points in skirting the shore of Ferry Lake Warren did abruptly (and technically speaking wrongfully) quit the shore line almost at right angles and deliberately left out, between his courses and the real senuosity of the lake shore, high timbered lands in place, but that he also embraced within his meander as land, bits of water almost equalling the land left out, which resulted in the Government losing nothing, because in patenting the particular areas the Government got paid for as many acres as if Warren had carefully followed the contour and sinuosities of the Lake—therefore, if Warren did wrongfully leave out between his meander and the actual shore, the high timber lands, it is a case damnum obsque injuria so far as the government is concerned. On page 4 of their brief defendants say with respect to the Lane case, "With respect to the Warren

survey Kidder admits taking the meander line as the boundary, there were included 10.9 acres of
264 lake which never belonged to the United States, and there was omitted 8.38 acres of land which should have been included." Again on page 5, "Kidder testifies that taking the whole of the northern shore of Ferry Lake involved sections 3, 10, 11, 12, 13 and 24 surveyed by Warren, the area of land lying between the Warren meander line and Kidder's establishment of the 173.09 contour line, was 69.56 acres, while the same meander line of Warren's included within his survey and shown as land, an area actually lying in the lake and never belonging to the United States Government, of approximately 44 acres." Thus reducing the actual acreage of land owned by the government by the difference between 69.56 and 44 acres, or 25.56 acres of land." Also on page 5 the defendants say on this point, "With respect to land contested for in suit 1164 as being in sections 25 and 36, the area, 22.20 acres, is trivial when compared with the quantity of land surveyed." Warren's map of section 25 shows 29.25 acres; he left out 8.90 acres or nearly one-third of the land. The land contended for in Sec. 24 is 11.49 acres. Warren's survey shows 114.80 acres not counting this, 11.49 acres, or a shortage of about 10% of the actual high land. In section 13 the amount of land claimed as left out by Warren's survey is 27.87 acres; Warren's map shows 115 acres, nearly 16% of the actual area omitted. In Sec. 10 the amount claimed herein as unsurveyed is 12.72 acres, the other land in this section left out as shown in Jeems Bayou Hunting & Fishing Club is 116.89 acres or a total of 129.61. Warren's map shows 289.88 acres, which means nearly 30% of the actual high land in the section omitted by Warren.

Kidder describes the survey made by Warren of the land in Sec. 3 as follows:

In Lot 1 of Sec. 3 (United States vs. Lane), Warren began his traverse on the southern boundary of the section at a point which was then six feet under water. This point is not covered by the water now because the lake has receded. The second course emerges from the water, crosses the boundary of the lake and begins to ascend the upland. His angle point 2, is above the 173.09 contour. The third course is through timber, undergrowth and over highland above the 180 foot contour, and, instead of being near the border of the lake is back in the woods and large timber. His fourth course left the highland and went back in the direction of the lake. The fifth course paralleled the border of the lake but was below the contour being 6 feet lower than the mean water elevation. The end of
265 the fifth course was exactly on the 173.09 contour. The difference in elevation between the first and second course is over 8 feet, that is, between angle points one and two.

Mr. Kidder says he sighted through the telescope along this course and found that he was actually "out from the lake to a point of lowland beyond the border of the lake. In measuring along the line we were going over the low hill which projects out into James Bayou at this place running through upland, timber and undergrowth. There is nothing on the ground to indicate that the border of the James Bayou ever occupied that position."

The line does not parallel James Bayou and, if intended as a meander, it is absolutely incorrect, the error being manifest.

Warren began his traverse here below the mean high water elevation and returned to the bayou at a point which agrees exactly with the contour. The line runs over a hill and as a result Lots 1 and 2 of Section 3 were omitted. These two lots contain an area of 8.38

acres in one compact body. Warren also omitted Lot 3 containing 9.05 acres, making a total of 17.13 acres omitted in this section." (57.64).

Plaintiff's brief contends as follows: Kidder describes Warren's survey of Sec. 10 in reference to omissions of land contended for in lot 7, as follows:

"In lots 7 of Sec. 10, (United States vs. Walling), Mr. Kidder found it necessary, in reproducing Warren's line through Sec. 10, to begin at the meander corner on the eastern boundary of Sec. 10 which was set exactly on the 173.09 contour. After paralleling the lake for two courses from this point, Warren departed from it on the third course. Following the bearings and distances given in Warren's field notes, Mr. Kidder found that when he sighted through the telescope "N. 78° W" on the third course, the line ran back into the woods on high ground 8 feet above mean water elevation. The other courses were traced out in exact accordance with the Warren field notes. The turning points on the line bore no relation to the border of the lake and were made on upland a considerable distance from the water. On the last course Warren returned to the lake at the 173.09 contour. He departed from the lake at angle point 22, shown on the Resurvey Plat."

The same comment is made as to the way in which he departed from the shore line as respects the areas omitted in the other suits. In fact, an inspection of the supplemental map filed by plaintiff marked "F" and admitted by defendants to be absolutely correct, shows the angles and methods used by Warren in his departure from the shore line in the cases complained of herein, and it cannot be questioned that at the points named Warren failed to run a correct meander line showing

the sinuosities of the lake shore and at these points his line bears no true relation to the body of water, nor does it approximate a contour.

In reply to defendant's contention as to the comparatively small area involved in these consolidated suits, the Government's contention (which I find to be a fact) is that Warren's survey of Township
266 20, N. R. 16 West, omitted 1047.67 acres of high land, 987.77 acres actually demonstrated as being omitted by subsequent corrective survey of Boyd, Bristol and Kidder; the remainder of 59.90 acres left out "is made up of strips of ground between the Traverse and the lake which were left out because the line was run at too high an elevation. In these instances, however, the traverse was run parallel with the lake and followed the contour with some degree of reason. Hence no corrections were made in the survey in this respect. The actual water surface at the time of the Warren survey which was represented as land on his plat was 65 acres." Warren described the total area of this township as 10328.09 acres, when in point of fact at the time of his survey and in 1812 when Louisiana came into the Union, the Township actually contained 11375.76 acres of high timber lands. Warren's omissions were nearly ten per cent of the whole land and this area lying unsurveyed by Warren naturally remained as the property of the United States. Defendants, however, contend that the areas included in these suits which undoubtedly lie outside of the actual so-called meander line of Warren and between it and the mean high water mark of the Lake shore, should be held to have passed to them under the patents obtained by their authors in title because the meander lines of Warren of the Ferry Lake shore are strictly meander lines defining the sinuosities of the water, altho a pronounced divigation was made by Warren from

the shore line at the points complained of. The defendants do not deny that their authors in title got the acreage called for by the map of Warren and the patent; they only claim that taking the whole of the northern shore of Ferry Lake, including Sections 3, 10, 11, 12, 13, and 24 surveyed by Warren, the area of land lying between the Warren meander line and Kidder's establishment of the 173.09 contour line was 69.56 acres and that Warren's survey included within it about 44 acres as land which in fact was water; so the Government as respects this part of the Township would only lose the difference, or 25.56 acres, which defendants virtually admit still technically remain in the Government as left out of the Warren survey. As above stated, there is no complaint by the original patentees of any of this land that they paid the government
267 for water instead of land and that they are entitled to relief from the government; on the contrary, as far as area is concerned in the original patenting of these lands, the area marked on the map and actually surveyed by Warren was accepted as land and must be presumed as closed, and defendants cannot now eke out any title to land, admittedly not within the boundaries of the property patented, on the ground that their ancestor in title did not get quite the acreage and therefore the present defendants are entitled to hold entirely new areas belonging to the Government as an offset. Title to new and separate areas of land cannot be acquired in this way. Legal title to land from the sovereign government can be acquired in only one way,—by written transfer commonly called a patent. Boldly stated the proposition of defendants is in effect that if the government has made a gain by selling water for land (the real fact as to this contention as respects this township is as follows:

As stated above Warren left out as is now conceded 1047.67 acres of high land from his survey. In this township, defendants contend that it would be equitable to permit the occupant of a piece of unsurveyed land in this township which land is about equal to the water area previously sold, in various parts of the township to compensate, and defeat the government's claim for said unsurveyed land by replying to the suit, "you have already been paid for all the land actually in this Township and I should keep this piece and you will really suffer no loss." As stated above defendants can only keep the areas in question by showing title. They contend the area is so little and when it was left out by Warren, so utterly worthless, that the government's claims should be dismissed on the ground of de minimis lex non curat. It is true that most of the cases dealing with the discussion of the difference between a meander line and a boundary line (the question herein involved) deal with larger areas than in these present consolidated cases, and in these areas the Courts have not hesitated to apply the principles contended for by the Government in these cases. For instance, in the case of the Jeems Bayou Hunting & Fishing Club the area actually involved was 85.22 acres. In the survey of Warren, his intention to leave out of his survey lands which
268 he should have included, according to law and his duty, was manifested just as plainly in his omission of 10 acres as in the case of a hundred acres and if in the case of the omission of a hundred acres the claimants contention is rejected and the 100 acres held to be public land belonging to the United States, why should the sale be different as respects the claimant of 10 acres? It is true that ordinarily litigations do not arise unless the fight is worth while as to values and it may be that the government, but for the discovery of oil or gas in this region would not have elected to

bring suit when only 10 or 25 acres were involved, but its right to do so would have been in existence even tho it elected not to enforce it. As a matter of fact these comparatively small pieces of land are now of great value, these in the above consolidated cases valued at over $100,000.00 It seems to me the rule repeatedly announced by the Supreme Court of the United States in defining the differences between a boundary line and a true meander line must and should be applied regardless of the superficial area involved. In these 17 suits the areas in question range all the way from 5.67 to 85 acres and the proof is just as clear in the smallest as in the largest area that Warren's so called meander lines (at the points complained of) violated the rules respecting such line, to-wit: that they must in fact fairly represent the sinuosities of the body of water and practically approximate and parallel the same.

I find as a fact that at the points complained of, these lines of Warren were not run according to the above principles but that he arbitrarily in such instances left the shore at right angles thereto, blazed his way thro high lands heavily timbered, and then returning to the shore line some distance apart from his departure. The lands so left out must be held to be unsurveyed public lands and I find in favor of the Government that the areas herein involved are in that catigory and should be decreed to be the government's property.

For the reasons given in the Jeems Bayou Hunting & Fishing Club, I do not consider the defendants herein in moral bad faith, and consider that the expenses incurred by them in drilling, equipping and administering the wells on the premises should be allowed in settling with the Government. The amount of
269 oil extracted by the Producers Oil Company and taken away by the Texas Company I find as follows:

In 1153 United States vs. Lane, et al., 42,735.23 barrels and the value thereof $36,430.73. Amount for drilling well and operating same, $16,047.23. The difference between the total value of oil and counterclaim, $20,383.50.

The royalties paid were:

To C. D. Lane, $1,517.95.

To Board of Commissioners, Caddo Parish Levee Board, $4,553.84.

I find there should be judgment against:

1. The Producers Oil Co. and Texas Co., in solido in the amount of $14,311.44 being value of total production, less counterclaim and royalties.

2. The Producers Oil Co. and Texas Co. and C. W. Lane in solido in sum of $1,517.95, amount of royalties paid Lane.

3. The Producers Oil Co., Texas Co., and Board of Commissioners, Caddo Parish Levee Board, in solido, for $4,553.84, amount royalties paid Board of Commissioners, Caddo Parish Levee Board.

In suit 1158, United States vs. Gulf Refining Company, I find the total production herein to be $6,986.62, but the drilling and operating expenses were, as I find, $10,191.00 and no royalties paid. The well was not profitable and the Gulf Refining Co. actually lost money in the operation so I recommend no money judgment against the defendants in this case, only a decree in favor of the government as owners of the land and entitled to possession thereof.

In United States vs. Southwestern Gas & Electric Co., No. 1162, I find the total value of oil extracted to be $29,946.94 (32,034.87 barrels) plus the pipe line earnings $3,203.48,—total income secured by the Gulf Re-

fining Co. from the well. The expense of drilling and operating was $12,784.68. The royalties paid to Caddo Oil Co., $933.30. The royalties paid to the Southwestern Gas & Electric Company, $747.99.

I recommend judgment against:

1. The Gulf Refining Co., of La., for $4,899.91, being difference between the royalties and counterclaims and total value of production, not including oil con-
270 tained in pipe line.

2. Against the Gulf Refining Co. and Caddo Oil and Gas Co., in solido, for $933.30, amount royalties paid to Caddo Oil & Gas Co., by Gulf Refining Co.

3. Against Gulf Refining Co. and Southwestern Gas & Electric Co., in solido, for $3,747.99, amount royalties paid the Southwestern Gas & Electric Co., as to which no expense was incurred.

In 1164, United States vs. LaRobadiere, et al.

In this case the oil produced by the Gulf Refining Company was $8,200.60 in gross value with a counterclaim for expenses actually incurred for drilling and operating of $12,771.25. There were royalties paid to Mrs. LaRobediere amounting to $3,075.21, and there should be judgment against her for that amount.

As the well was a losing venture for the Gulf Refining Co., I think no judgment in money should be given against it, but simply against it giving the land as belonging to the government.

It appeared in the course of the trial that an added royalty was paid to Blanchard, Barrett & Smith of $1,205.07, and the right to litigate this matter is reserved to the Government.

No. 1163, United States vs. J. M. Walling, et al.

I find the oil produced by the Gulf Refining Company of La., of the value of $77,278.79, with a counterclaim for drilling and operating $20,643.87; difference between gross value of oil and the counterclaim, $56,634.87, for which judgment should go against the Gulf Refining Company.

It appeared in the trial that royalties had been paid by the Gulf Refining Co., to H. L. Heilperin, Natalee Oil Co., J. A. Thigpen and S. L. Herold, and the rights of the Government should be reserved as against them.

No. 1155 United States vs. Chas. J. Green, et al;

No. 1160 United States vs. W. H. Enders, et al.; consolidated.

No. 1165 United States vs. A. C. Loucks, et al.,

Two of the above cases were consolidated, the third tried separately, but they are not distinguished however from the other cases already considered by me,
271 and the facts are practically the same and the law applicable thereto practically the same as in the cases already considered by me.

The Greene case involves lots 2 and 3, Sec. 27, containing 65.77 acres as shown by Supplemental map of plaintiff marked F. The defendants claim under a patent calling for 147.25 acres as per Warren's survey; they got all their acreage and are claiming the 65.77 acres never surveyed by Warren or more than a third of the area actually purchased by Green from the United States; if defendants' contention is upheld he would have 213.03 acres when he actually bought and paid for 147.25 acres. The methods used by Warren in leaving out of this survey high timbered lands above overflow in the cases already decided, were used in this case, it being abundantly proven in these three cases that Warren ran his so called meander line as far as 1200 feet from the true shore, working his way through high lands well timbered. This is well il-

lustrated on the map "F" and also on the topographical map in evidence marked Plaintiff "B". The well was not profitable, the expense of drilling and operating incurred by the oil company exceeding the value of the oil and no judgment for money should be made against the Amateur Oil Company, but the Louisiana Oil Refining Co., bought the productions from the Amateur Oil Co., and out of the oil paid a royalty to Greene of $210.79 for which there should be judgment in solido against it and Greene. Afterwards the Louisiana Oil Ref. Company took over the well and paid a royalty to Greene of $186.78 and made a profit on its production of $557.75 net production after deducting the cost of production.

There should be judgment therefore against:

1. C. J. Greene and Louisiana Oil Refining Co., in solido, for $210.79.

2. Louisiana Refining Corporation, $557.78.

3. Louisiana Refining Corporation and C. J. Greene, in solido, 185.65, and against all defendants recognizing the land as the property of the United States. In this case Greene virtually acknowledged that this land was United States property. He made on Jan. 22, 1913, a mineral location embracing fractional NW ¼ of section 27, between the traverse line and the lake. In this location the land is referred to as "unsurveyed." He
272 did same on June 17, 1910, "for all lands below the United States Traverse in N. W. ¼ Sec. 27." No effort to develop the land under this location was made, but this incident shows he did not consider that he was the reparian owner of the area in dispute.

No. 1160, United States vs. Enders, et al.

This property embraces 66.20 acres being lots 5 and 6 of Sec. 9, and immediately adjoining the land in controversy in Jeems Bayou Hunting & Fishing Club, lying between said Jeems Bayou Hunting & Fishing Club land and Ferry Lake. There was no serious dispute of the Government's title, defendants' pleadings asserting they had no convictions on the subject but that during 1910 veritably believing same was government land, made a mineral location; prior to the time of the withdrawal order of the President December 15, 1908. The Standard Oil Co. entered a plea of nolle contendere, but admitted it had taken oil from the land under a division order and paid the purchase price to Heilprin and asked for judgment against him in case it was held. The defendants really make no serious claim to the property as owners, but content themselves under the mineral location. The proof of the Government's ownership is as complete as in the Jeems Bayou Hunting & Fishing Club case and for the reasons therein given, judgment recognizing the United States as owners of the area in question should be entered.

As to the claim on the mineral location, your Honor has already decided that the withdrawal order of Dec. 15, 1908, was applicable to this land. So it appears defendants are without any right or legal title to the land. The Standard Oil Co. admit running oil from the land valued at $1,577.24 and paid out in royalties to the mineral locators $197.16. Judgment should go against the Standard Oil Company for $1,380.08 (with reservation of its rights to recover this amount and the $197.16 royalties against Heilprin from whom they purchased the oil) and against the defendants Levi Cooper, W. T. Crawford, W. H. Enders and Standard Oil Co., of La., in solido, for $197.16. I recommend a judgment in favor of the United States

for the land in question as prayed for by the petition, and for the above amount against the defendants.

No. 1165, United States vs. A. C. Loucks, et
273 al.

The area involved is 14.13 acres, being lot 1 of Sec. 27. The evidence in the Greene case and Jeems Bayou case was offered herein besides the testimony of Kidder and others, who with him explored the status and character of these omitted areas, and for the same reasons heretofore given by me in the cases already decided, I find the area in question was high timbered land omitted by Warren from his survey (the defendants traced title to a patent from the United States conveying 123.49½ acres and the original patentee and the defendants got this full acreage independent of the area of 14.13 acres herein claimed) and that judgment should go in favor of the United States as being the owner of the said area as not having been entered in Warren's survey. It remains to consider what money judgment should be rendered.

For the reasons given in the early part of this report, citing Cook vs. Gulf Refining Co., 135 La., 610, and in case of Elder vs. Ellerbe, et al., 135 La., 990, before any recovery by the Government for oil extracted, I think the cost of drilling and equipping the wells and operating same, should be deducted.

Inasmuch as the well cost to drill and operate, $8,439.37 and the total oil taken out was only $494.00, no judgment should go against the Producing Co., to-wit: the Standard Oil Co., but out of the exploration and operation Loucks received 61.75 and the Gulf Refining Co. 52.42 and there should be judgment against them in favor of the United States for those amounts and I so recommend.

In the discussion of each case under the title of Quantum and Basis of Recovery, the contentions of the Government with respect to the amounts which should be allowed are set forth in detail. There should be a decree in favor of the Government in the respective sums heretofore stated. In addition to the recommendations previously mentioned, it is respectfully recommended:

1. That the lands involved in the respective suits be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the Public Land or Mineral laws of the United States.

274 2. That the muniments of title under which the defendants claim may be declared null and void and held as nought insofar as they may include, directly or indirectly, the property in controversy in these suits, and, to that extent, that the said leases and transfers be cancelled and annulled. This recommendation, of course, does not include the patents on which the claims of riparian ownership are predicted, the validity of which patents is not denied by the Government. The patents, however, do not include any property in suit. This prayer of the bill of complaint relates to the leases and other transfers by which a conveyance of the various tracts was sought to be made.

3. That the lands described in the bills of complaint be adjudged and decreed to be the property of the United States, free and clear of all claims of the defendants and that the possession of said land may be restored to plaintiff.

4. That said defendants during the progress of this cause and finally and perpetually thereafter, may be enjoined from setting up any claim to said lands or any part thereof, and from creating any cloud upon the Government's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said lands, or in any manner using the same, or extracting oil or other minerals therefrom.

5. That a receiver be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon and any other property and instrumentalities thereon used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and to preserve the same.

6. That defendants be ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said lands since January 1918, and to pay plaintiff the value thereof as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced since January 1, 1918, be reserved.

In all of the above recommendations for payment of money judgments, I recommend that interest be allowed thereon at the rate of 5% per annum until paid, from the filing of this report.

Respectfully submitted,

E. H. RANDOLPH,
Master in Chancery.

275 Indorsed:—Opinion and recommendations, E. H. Randolph of the Master in Chancery, Recorded in Chancery Order Book, Vol. 5, Folio 559-587. Filed Jan. 11, 1919, 11:25 A. M.

276 (EXCEPTION TO REPORT OF MASTER BY THE TEXAS CO).

United States District Court for the Western District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1153 In Equity.
C. W. Lane, Et Al.

Now comes the defendant The Texas Company and excepts to the report of Honorable E. H. Randolph Special Master in Chancery, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That the said Master certified and stated that this defendant, in said cause, was liable to the United States, insoldio, with the Producers Oil Company, first, for Fourteen Thousand Three Hundred Eleven and 44-100 ($14,311.44) Dollars; second with the Producers Oil Company and C. W. Lane, for One Thousand Five Hundred Seventeen and 95-100 ($1517.95) Dollars, insolido amount of royalties paid to C. W. Lane, and third, with Producers Oil Company and Board of Commissioners of the Caddo Levee District, insolido, for Four Thousand Five Hundred Fifty-three and 84-100 (4,553.84) Dollars, amount of royalties paid to and received by said Board, from oil

extracted from said land, in controversy, (page 23 of Report); instead of stating and certifying that, as a marketing company taking the oil produced from the land, in controversy, The Texas Company was not liable, and could not be, in all events, held insolido for said royalty.

2.

That the said Master, in said report, which is excepted to on the further ground, should have stated and certified that there was no allegation in the pleadings, or any proof in support thereof, in the record, holding the said The Texas Company liable, as a joint trespasser, or as having acted in concert with the Producers Oil Company C. W. Lane and the Board of Commissioners of the Caddo Levee District, or with any of them, in extracting the oil from the lands, in controversy.

3.

That it further excepts to said report of the Master, in stating and certifying that interest on the aforesaid respective amounts (page 23 of Report), against it and
277 the Producers Oil Company, C. W. Lane and Board of Commissioners of the Caddo Levee District, should be allowed at the rate of five per cent per annum thereon from the filing of said report, instead of stating and certifying that The Texas Company and Producers Oil Company, C. W. Lane and the Board of Commissioners of the Caddo Levee District, if held insolido, are liable for interest from the date of judgment on the amounts set out in said report, in case the United States is successful in this cause.

HAMPDEN STORY,
Solicitor for the Texas Company.

Indorsed: Exception to report of Special Master in Chancery. Filed Jan. 24, 1919.

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278 (EXCEPTION TO MASTER'S REPORT BY PRODUCERS OIL CO. AND BOARD OF COMMISSIONERS)

In the District Court of the United States for the Western District of Louisiana.

United States of America,
Plaintiff,
vs. No. 1153 In Equity.

C. W. Lane, et al,
Defendants.

Now comes the Producers Oil Company and the Board of Commissioners of the Caddo Levee District, defendants herein, and except to the report of E. H. Randolph, Esquire Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception show:

1.

That the Master has in his said report stated and certified that the land in controversy is the property of the United States as unsurveyed lands; whereas he should have certified and reported that the property in controversy is an integral part of the fractional west half of Section 3, Township 20 North, Range 16 West, a tract of surveyed land long since patented by the United States.

2.

That the Master in said report stated and certified that the defendants,

"While conceding that this case falls in the same category as that of the Jeems Bayou Hunting & Fishing Club, that the case should be differentiated from that case because the area involved in this case is comparatively very small and that the maxim de minimis lex non curat should apply"

whereas in truth and in fact the defendants made no such admission and the Master should not have so reported.

3.

That the Master in said report stated and certified that

"They contend that in these particular cases the lines that, as contended for plaintiff, at some points in skirting the shore of Ferry Lake, Warren did abruptly (and technically speaking wrongfully) quit the shore
279 line almost at right angles and deliberately left out, between his courses and the real sinuosity of the lake shore, high timbered lands in places, but that he also embraced within his meander, as land, bits of water almost equalling the land left out, which resulted in the Government losing nothing, because in patenting the particular areas the Government got paid for as many acres as if Warren had carefully followed the contour and sinuosities of the lake; therefore, if Warren did wrongfully leave out between his meander and the actual shore the high timber lands, it is a case of damnum absque injuria so far as the Government is concerned;"

Whereas defendants made no such admission or contention and the Master should have reported and certified that defendants contend and insisted before him that Warren's line was in fact and in law a meander line and not a line of boundary; the arguments of the defendants relative to water areas included in the acreage shown on Warren's survey being merely arguendo.

4.

The Master reported and certified that the line run by Warren relative to the property in controversy was not in truth a meander line and was not run according to the principles governing the running of meander lines; whereas he should have reported and certified that said line was in truth and in fact a meander line, and not a line of boundary.

5

That the Master has in said report erroneously stated and certified that Warren's survey of Township 20 North, Range 16 West, was not a proper survey of the township; whereas he should have reported that under all the circumstances under which the survey was made and the instruments then in use, the survey was not only a reasonably correct one, but was made with a remarkable degree of accuracy.

6.

That the Master in said report erroneously stated that the defendant's only claim is

"that taking the whole of the northern shore of Ferry Lake, including Sections 3, 10, 11, 12, 13, and 24, surveyed

by Warren, the area of land lying between the Warren meander line and Kidder's establishment of the 173.09 contour line, was 69.56 acres, and that Warren's survey included within it about 44 acres of land which in fact was water; so that the Government as respects this part of the township would only lose the difference, or 25.56 acres, which defendants virtually admit still technically remain in the Government as left out of the Warren survey;"

whereas the facts are, and the Master should have certified and reported, that defendants never made
280 any admission that the land "still technically remains in the Government as left out of the Warren survey; but, on the contrary, that they contended and insisted that the land in controversy was embraced within the Warren survey as part of the fractional West half of Section 3, Township 20 North, Range 16 West, a tract of surveyed land long since patented by the United States.

7.

That the Master reported and so certified that

"Defendants cannot now eke out any title to land, admittedly not within the boundaries of the property patented, on the ground that their ancestors in title did not get quite the acreage and, therefore, the present defendants are entitled to hold entirely new areas belonging to the Government as an offset;"

whereas the facts are, and the Master should have so reported, that defendants never made any such contention, but have insisted and still insist, that the tract of land

in controversy is within the boundaries of the property patented; defendants' counsel making the argument as to the water surface referred to only by way of argument.

8.

That the Master has in said report stated and certified that

"Baldly stated, the proposition of defendants is in effect that if the Government has made a gain by selling water for land, it would be equitable to permit the occupant of a piece of unsurveyed land in this township, which land is about equal to the water are a previously sold, to compensate and defeat the Government's claim for said unsurveyed land by replying to the suit, 'you have already been paid for all the land actually in this township and I should keep this piece and you will really suffer no loss:"

whereas defendants never made such contention and the Master should not have so reported and certified, but should have stated that the defendants insisted that the land in controversy was not unsurveyed land but an integral part of the fractional west half of Section 3, Township 20 North, Range 16 West, long since patented by the United States; the arguments advanced by counsel for the defendants with reference to water surface being by way of illustration and argument only.

9.

That the Master has in said report stated and certified that defendants

281 "contend the area is so little and when it was left out by Warren so utterly worthless that the

Government's claim should be dismissed on the ground of de minimis lex non curat;"

whereas the Master should have reported and certified that the defendants' contention and insistence was that Warren's purported meander line was in truth and in fact and in law a meander line, and not a line of boundary, and that the tract in controversy was not left out of the Warren survey but formed an integral part of the subdivision of the fractional west half of section 3, Township 20 North, Range 16 west, long since patented by the United States; the reference by defendants as to the small quantity of land involved being part of its argument only, as going to disprove the plaintiff's contention.

10.

That the Master reported and certified as a fact,

"that at the points complained of, these lines of Warren were not run according to the above principles, but that he arbitrarily in such instances left the shore at right angles thereto, blazed his way thro high lands heavily timbered, and then returning to the shore line some distance apart from his departure:"

whereas the Master should have certified and reported that the lines run by Warren as meander lines were in truth and in fact meander lines, according to the principles of surveying and the laws of the United States.

11.

That the Master has in said report stated and certified that the Warren meander line was a line of boundary,

and not a meander line; whereas he should have reported and certified that the lake front boundary of the subdivision described as "fractional west half of Section 3, Township 20 North, Range 16 West, long since patented by the United States, is the ordinary high water mark of Ferry lake, and not the Warren meander line.

12.

That the said Master has in said report certified that these defendants should pay interest upon the amount of judgment rendered against them, at the rate of five (5) per cent per annum from the filing of the report;
282 whereas he should have certified that if any judgment is rendered against these defendants, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore, defendants pray that these exceptions be sustained and that judgment be rendered in their favor accordingly.

HAMPDEN STORY,
Solicitors for Producers Oil Co.
THIGPEN & HEROLD,
L. C. BLANCHARD,
Dist. Attorney.
W. C. BARNETTE,
Special Counsel.
Solicitors for Board of Commissioners of Caddo Levee District.

Indorsed: Exceptions of the Producers Oil Company and the Board of Commissioners of the Caddo Levee District. Filed, Jan. 30, 1919.

283 (EXCEPTION TO MASTER'S REPORT BY C. W. LANE)

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,

Plaintiff,

vs. No. 1153 In Equity.

C. W. Lane, Producers Oil Company, The Texas Company, Board of Commissioners Caddo Levee District

Defendants.

Now comes defendant, C. W. Lane, and reserving all rights under demurrer heretofore filed, excepts to the report of E. H. Randolph, Special Master herein, which said report was filed January 11, A. D. 1919, and shows that the Master erred in his finding of facts as hereinafter set forth.

1. Defendant denies that he ever made any admissions or concessions that any other suit, particularly the suit of United States vs. Jeems Bayou Fishing & Hunting Club was in the same class as this suit and that the Master's finding of same is erroneous and entirely unwarranted by anything in the record.

2. Your defendant further shows that the finding of the Special Master that the land involved in this suit was not swamp, now overflowed land is not in accordance

with the facts which is especially shown by the report of Prof. James, Ecologist, which report specifically shows that the area included in this suit was purely a tract of land permanently overflowed.

Wherefore, your appearer shows that the report of the Special Master should be set aside, these exceptions sustained and judgment rendered rejecting the demand of the United States against your defendant.

FOSTER, LOONEY &
WILKINSON.
FRANK J. LOONEY,
Solicitor for C. W. Lane.

Indorsed: Exception to report of E. H. Randolph, Special Master. Filed Jan. 30, 1919.

284 (PLAINTIFF'S EXCEPTIONS TO MASTERS REPORT.)

In the District Court of the United States for the Western District of Louisiana.

United States of America,
V. No. 1153.
Charles W. Lane, et al.

United States of America,
V. No. 1158.
Gulf Refining Company of Louisiana, et al.

United States of America,
V. No. 1162.
Southwestern Gas & Electric Company, et al.

United States of America,
V. No. 1163.
J. M. Walling, et al.

United States of America,
V. No. 1164.
Mrs. Jessie M. La Robadiere, et al.

(Consolidated)

Now into this Honorable Court comes plaintiff, the United States of America, appearing herein through undersigned counsel, and excepts to the report of Hon. E. H. Randolph, Master in Chancery, in the above numbered, consolidated causes, insofar as the said report recognizes the defendants as innocent trespassers, and al-

lows the counterclaims filed by them, for the following reasons, to-wit:

285 1. As shown by plaintiff's exhibits "A" and "B" (testimony page 6), the lands in controversy were withdrawn December 15, 1908 from settlement and entry or other form of appropriation "to conserve the pubic interest, and in aid of such legislation as may here after be proposed or recommended," which said withdrawal was ratified and continued in effect by the withdrawal of July 2, 1910; said withdrawals having been issued by the President of the United States, acting by, and through the Secretary of the Interior.

That drilling on withdrawn lands is in contravention of the policy of the United States, as shown by said withdrawals, to retain the oil in the ground for legislative disposition. This policy precludes the consideration of any equitable benefit to the government from drilling and operation of the wells.

2. That as shown by admission of counsel in suit No. 1153 (record, p. 96), and by testimony of James W. Neal, and statement prepared by him in suit No. 1158; by testimony in record (100) in suit No. 1162; by statement marked "1164, Gulf Refining Company of Louisiana, No. 3," attached to the original copy of the testimony and by the admission of counsel in suit No. 1163 (record, p. 7), all of the wells on the lands in said consolidated suits were drilled long subsequent to the withdrawal order of July 2, 1910, and plaintiff avers that the drilling of said wells was in violation of both said withdrawal orders.

3. The Master erred in not finding and giving consideration to the fact that the said lands had been with-

drawn for the purposes above stated. The evidence in the record relative to said withdrawals was clear, conclusive and uncontradicted. Said evidence consisted of plaintiff's exhibits "A" and "B", offered and admitted in evidence at p. 6 of the record, and certain additional documentary evidence introduced in the case of the United States vs. Sam W. Mason, et al., No. 1172, of the docket of this Honorable Court, being plaintiff's exhibits "A", "B", "C", "D", "E", "F,—1, 2, 3, 4, 5," "G".
286 "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", "S", "T", (offered and admitted in the record of the present causes at p. 6), this Court having held, in the said Mason case, that the withdrawals included township 20 N., R. 16 W., and prohibited mineral locations, which ruling is applicable to this suit, and was so recognized by the Master in his report.

While no claim was, or could be asserted by defendants under the mining laws or under mineral locations, said evidence was relevant to the issue, because the Master found that the defendants had no title to said land, and the testimony above referred to showed that defendants in taking and removing said oil violated said withdrawal orders, and prevented the disposition of said oil by Congress.

4. That no testimony was offered by defendants, nor otherwise adduced, to show that they acted in good faith in drilling and operating the wells in question. That the defense of innocent trespass is an affirmative defense, and the defendants did not prove or attempt to prove that they extracted and removed the oil from plaintiff's land through mistake or inadvertence, nor did they show that they acted on the advice of counsel, or in the belief that they were the owners of the property. The wrongful taking of the property of another, in the absence of

all other evidence, raises a presumption that the trespasser took it intentionally, wilfully or in reckless disregard of the rights of the owner, and this presumption was not overcome, nor sought to be overcome, in any manner whatever by defendants.

5. There was no evidence to show, directly or indirectly, that the defendants were in moral good faith in extracting and removing the oil in question.

287 6. Plaintiff further excepts to the finding of the Master in suit No. 1164, entitled United States vs. Mrs. Jessie M. LaRobadierre, et al., wherein a decree was recommended only against the royalty claimant, Mrs. Jessie M. LaRobadierre. Plaintiff shows that according to the Master's report, the Gulf Refining Company of Louisiana produced oil from the land involved in said suit of the value of $8,200.60, and that said Company paid a royalty therefrom to defendant, Mrs. Jessie M. LaRobadierre, of $3075.21, the Master holding that inasmuch as the counterclaim exceeded the production there should be a decree in favor of the government for the royalty only against Mrs. Jessie M. LaRobadierre, and that no decree in money should be rendered against the Gulf Refining Company of Louisiana. Plaintiff shows that the failure of the Master to recommend a decree in favor of the government for the full amount of the production, including the royalty, against the Gulf Refining Company of Louisiana was error, and that in any event there should be a decree in favor of plaintiff and against the Gulf Refining Company of Louisiana and Mrs. Jessie M. LaRobadierre, in solido, for the amount of said royalty.

Plaintiff shows that no expense was incurred with respect to said royalty, and that defendant, the Gulf Refining Company of Louisiana, is liable, in solido with the said Mrs. Jessie M. LaRobadierre for the amount thereof.

Wherefore, plaintiff prays that these exceptions be sustained, and, accordingly, that the counterclaims filed by defendants be rejected and disallowed, and that there be a decree in favor of the United States and against the defendants as follows, to-wit:

288 In Suit No. 1153, United States v. C. W. Lane, et al.

(a)	Against the Producers Oil Co. and the Texas Company, in solido, in the sum of	$30358.94
(b)	Against the aforesaid companies and C. W. Lane, in solido, for royalty paid C. W. Laen, in the sum of	$ 1517.95
(c)	Against the aforesaid companies and the Board of Commissioners of the Caddo Levee District, in solido, for royalty paid Levee District, in the sum of	$ 4553.84
	Aggregating	$36430.73

(Being total value of production, as shown by the Master's report).

In Suit No. 1158, U. S. vs. Gulf Refining Company of Louisiana.

Against the Gulf Refining Company of Louisiana in the sum of $6986.62

Said amount being total value of production, as shown by Master's report.

In suit No. 1162, U. S. v. Southwestern Gas & Electric Co., et al.

(a)	Against the Gulf Refining Company of Louisiana in the sum of	$25265.65
(b)	Against the Gulf Refining Company of Louisiana and the Southwestern Gas & Electric Co., in solido, for royalty paid latter Company, in the sum of	$ 3747.99
(c)	Against the Gulf Refining Company of Louisiana and the Caddo Oil & Gas Co., in solido, for royalty paid latter company, in the sum of	$ 933.30
		$29946.94

(Being total value of production, as shown by Master's report).

In Suit No. 1164, U. S. vs. Mrs. Jessie M. LaRobadierre, et al.

(a)	Against the Gulf Refining Company of Louisiana in the sum of	$5125.39
(b)	Against the Gulf Refining Co. of Louisiana and Mrs. Jessie M. LaRobadierre, in solido, for amount of royalty paid Mrs. Jessie M. LaRobadierre	$3072.21
		$8200.60

(Being total value of production, as shown by Master's report).

289 (c) In the alternative for a decree against the Gulf Refining Company of Louisiana and Mrs. Jessie M. LaRobadierre, in solido, for amount of royalty paid by said Gulf Refining Company of Louisiana to Mrs. Jessie M. LaRobadierre, as shown by the Master's report, amounting to the sum of $3075.21

In Suit No. 1163, U. S. vs. J. M. Walling, et al.:

Against the Gulf Refining Company of Louisiana for the full value of the production, as shown by the Master's report, amounting to the sum of $77,279.79

Plaintiff prays that in all other respects the said report and recommendations of the Master be confirmed and made the decree of this Honorable Court. Prays for all orders and decrees necessary and for general relief.

ROBERT A. HUNTER,
Special Assistant to The Attorney General.

Indorsed:—Plaintiff's Exceptions to the Special Master's Report. Filed Jan. 30, 1919, 1:00 P. M.

290 (OPINION OF THE COURT).

In Re: Government Oil Suit. Western Dist. of Louisiana.

Beginning in July, 1917, the United States filed eighteen suits against various persons to have certain land decreed the property of the United States, withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States; to cancel certain leases of the said land to various oil companies; to enjoin any further exploitation of the land; and for an accounting from the various parties who had drilled for oil, or purchases it from the drillers, or otherwise had come into possession of the oil.

The cases were referred to the Honorable Edward H. Randolph, as Special Master, and in due course he filed his report. The land in controversy is all located in what is known as the Caddo Lake, or Ferry Lake, Oil District, in Caddo Parish, Louisiana. In each case the Master has reported in favor of the United States and has stated an account against the defendants who claim to own the land, against those who hold under oil leases and those who have purchased the oil extracted, either from the owners, or lessees.

Certain fundamental facts govern all the cases. It appears that in 1838 most of the land in question was surveyed for the United States by Warren. In making his survey he undoubtedly left out certain portions of land, inconsiderable as to acreage but now extremely valuable because of the underlying oil deposits. In 1916 the land was resurveyed by Kidder, and the disputed areas included in the survey. Some of the defendants claim riparian rights to the land. There is no doubt, however,

that all of the land included in the resurvey was high land in place at the time the original survey of Warren was made and he simply was in error in running his lines, which is not at all surprising, considering the unsettled character of the land at that time and the difficulties surveyors must have encountered.

The land was withdrawn from entry first by a proclamation of President Roosevelt in 1908, and later by proclamation of President Taft in 1910. The land lies ad-
291 jacent to Caddo or Ferry Lake and Jeems or James Bayou. It is contended by some of the defendants that Warren intended the actual shore line to be the boundary line of his survey, and the lines he actually ran, or reported that he had run, were meander lines to determine the approximate areas of the survey. In some of the cases it is admitted that the land is public domain and the defendants claim under the mining laws. A further contention is made that that there was no ownership of the oil in the Government, that oil is different to minerals of a solid character and is not susceptible of ownership until brought to the surface and separated from the soil. The Master has found against all of these contentions, and in clear and able opinions has disposed of them. It would be useless for me to attempt to supplement the report of the Master and in my opinion his findings should be approved. The Master allowed interest from the day of the filing of his report. It is contended if ultimate judgment is against the defendants interest should be allowed only from the day of judgment. Again I must agree with the Master. The filing of his report is tantamount to the verdict of a jury and it is usual to allow interest in Federal Courts from the date of verdict rather than from the date of Judgment. It is particularly urged that there could be no judgment against the various pipe lines who purchased the oil from the drillers on the theory above

stated that the government had no ownership in the oil until reduced to possession. I cannot agree with this contention either. The ownership of the Government is somewhat different to that of a private proprietor and the integrity of the Government's title in any and all considerations demands that it should have a right of action against any one profiting by a violation of the laws of the United States intended as conservation measures.

The Government has excepted to the report of the Master in allowing the defendants to set-off as against the judgment for the value of the oil the cost of producing it,
292 contending that the parties were not in good faith. Considering the extreme uncertainty of the law and all of the facts in the case, I must decide this point against the Government. This disposes of the general contentions in all the cases.

In suit No. 1155, U. S. vs. C. J. Greene, it is contended in argument that the Master's report was erroneous in rendering judgment against the Louisiana Oil Refining Corporation and not against the Amateur Oil Company from whom it purchased. This objection is not made in the exceptions to the Master's report filed. The Master found there should be no judgment against the Amateur Oil Company because the well was not profitable and the expense of drilling and operating exceeded the value of the oil. He recommends judgment against the other defendants, however, because they actually got the oil. I see no reason to disagree with the conclusions of the Master. The decree will not prevent an adjustment of equities between the parties.

In case No. 1160 U. S. vs. Henly, et als., it is contended in argument on behalf of the Government that no counterclaim was plead or proved. I find no special exception in the record to this effect. The judgment as recommended

is supported by the answers to interrogatories in the record.

The case of the U. S. vs. Thomas J. Stockley, No. 1166, is the only case presenting any difficulty, but considering the views expressed in overruling the preliminary objection, I think on the whole the Master's report should be confirmed.

The labor of the Court in these complicated cases has been much lightened by the Master through his able report and by counsel through their fair and lucdi arguments and briefs. All of them are entitled to the thanks of the Court.

All exceptions will be overruled and decrees will be entered in all these cases in accordance with the suggestions of the Master. Jurisdiction in each case will be retained for the purpose of adjusting any further
293 equities between the parties.

(Signed) RUFUS E. FOSTER, Judge.

July 15/19.

Indorsed:—United States of America vs. C. W. Lane, et als. Opinion. Filed July 17, 1919.

294 (DECREE).

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1153, In Equity.
C. W. Lane, Producers Oil Company, Texas Company, Board of Commissioners, Caddo Levee District.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

1. That the report filed herein January 11, 1919, by E. H. Randolph, Special Master in Chancery, be and the same is hereby approved and confirmed, and, accordingly:

II. That the land described in the bill of complaint, namely, Lot Number One (1) of Section Three (3), in Township Twenty (20), North of Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing five and sixty-seven hundredths acres, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and ex-officio Surveyor General for the State of Louisiana, be and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

III. That the lease made June 6, 1910, by the Board of Commissioners of the Caddo Levee District to defend-

ant, C. W. Lane, as per an act of record in Book 59, page 554, and the transfer and assignment thereof by the said C. W. Lane to defendant, the Producers Oil Company, June 30, 1910, by an act of record in Book 59, page 554, said instruments having been recorded on the Conveyance Records of the Parish of Caddo, State of Louisiana, be and the same are declared null and void and held for naught insofar as the same may include directly or indirectly the above described property, and, to that extent, the said lease and transfer are annulled and shall be cancelled.

295

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of the said land shall be restored to plaintiff.

V. That the said defendants, namely, C. W. Lane, the Producers Oil Company, the Texas Company and the Board of Commissioners of the Caddo Levee District, shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas, or minerals, on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and, accordingly, that a writ of injunction issue restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of the Producers Oil Company and The Texas

Company, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Fourteen Thousand, Three Hundred and Eleven and 44/100 ($14,311.44) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

296 VII. That the United States of America do have and recover of and from the Producers Oil Company, the Texas Company and C. W. Lane, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Thousand, Five Hundred and Seventeen and 95/100 ($1517.95) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VIII. That the United States of America do have and recover of and from the Producers Oil Company, the Texas Company, and the Board of Commissioners of the Caddo Levee District, in solido, and the said defendants are hereby condemned and ordered to pay plaintiff, the full sum of Four Thousand, Five Hundred and Fifty-Three and 84/100 ($5,553.84) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

IX. That the said defendants be and they are hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

X. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreveport, Louisiana, be and is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered,
297 commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree, furnish bond, with good and solvent surety, to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of One Thousand ($1,000.00) Dollars, which said bond may hereafter be increased or reduced, as the Court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil or other property that may come into his hands as receiver. The said receiver shall surrender possession of said land and of all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said receiver, to obtain such

accounting from the said receiver as the Court may order, to require the delivery to the United States of such land and property, and the accounting and payment to be made by the receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do and perform such other acts, in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

XI. That the said defendants be, and they are hereby, condemned and ordered to pay all the costs of
298 this suit.

XII. That the rights, if any, of the Producers Oil Company and the Texas Company against their warrantor, C. W. Lane; and the rights, if any, of the said C. W. Lane, against his warrantor, the Board of Commissioners of the Caddo Levee District, be, and the same are hereby, reserved.

Thus done, read and signed in open Court, this 4th day of August, 1919.

RUFUS E. FOSTER,
United States Judge.

Indorsed:—Decree. Filed Aug. 12, 1919.

299 (PETITION AND ORDER OF APPEAL).

In the District Court of the United States, for the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1153 In Equity.

C. W. Lane, Producers Oil Company, The Texas Company, Board of Commissioners, Caddo Levee District, Defendants.

To the Honorable Judge of the District Court of the United States for the Western District of Louisiana, sitting within and for the Shreveport Division:

The above named defendants, C. W. Lane, Producers Oil Company, The Texas Company, and the Board of Commissioners of the Caddo Levee District, feeling themselves aggrieved by the decree made and entered in this cause on the 4th day of August, 1919, do hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit for the reasons specified in the assignment of errors, which is filed herewith, and now pray that their appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers on which said decree was based, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans.

And your petitioners further pray that the proper order touching the security to be required of them to perfect said appeal be made.

THIGPEN & HEROLD,
FOSTER, LOONEY & WILKINSON,
HAMPDEN STORY,
Solicitors for Defendants.

300 ORDER.

Let the foregoing petition be granted and the appeal allowed which shall operate as a supersedeas upon the defendants giving bond condition as required by law in the sum of thirty-five thousand ($35,000.00) dollars.

Sept. 3/19.

RUFUS E. FOSTER,
United States District Judge.

Indorsed:—Petition and Order for Appeal. Filed Sep. 25, 1919.

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301 (DEFENDANTS' ASSIGNMENT OF ERRORS).

In the District Court of the United States, for the Western District of Louisiana.

United States of America, Plaintiff,
vs. No. 1153 In Equity.
C. W. Lane, et al., Defendants.

And now, on this the .... day of ....., 1919, come all the defendants by their solicitors, Thigpen & Herold and Hampden Story, and say that the decree entered in the above cause on the 4th day of August, 1919, is erroneous and unjust to the defendants; and for specification of said errors, show:

First.

The Court erred in holding that the property in controversy is public lands of the United States.

Second.

The Court erred in holding that the premises in controversy is not a part of the northwest quarter of the southwest

quarter (NW¼ of SW¼) of Section Three (3), Township Twenty (20) North, Range Sixteen (16) West, patented by the United States to John A. Russell on September 26th, 1906.

Third.

The Court erred in holding that the meander line run by Warren, United States Deputy Surveyor is a line of boundary.

Fourth.

The Court erred in holding that the northwest quarter of southwest quarter of said Section 3, Township 20, Range 16, does not extend to Ferry Lake, as shown by the approved official plat of survey by A. W. Warren, United States Deputy Surveyor.

Fifth.

The Court erred in holding without any evidence to support the finding that Warren's meander of Ferry Lake in the northwest quarter of southwest quarter of said Section 3, Township 20, Range 16, was not run
302 to denote the boundary of the property as being the natural monument of Ferry Lake, but is in itself the boundary.

Sixth.

The Court erred in holding that there were any facts or circumstances shown in the evidence, disclosing any intention to limit the property known as the northwest quarter of southwest quarter of said section 3, Township 20, Range 16, to actual traverse lines or to cause such result to follow the survey.

Seventh.

The Court erred in condemning this defendant for the value of any oil produced from the premises in controversy.

Wherefore, defendants pray that the said decree be reversed and the District Court directed to dismiss the bill; and for general relief.

THIGPEN & HEROLD,
HAMPDEN STORY,
Solicitors for Defendants.

Indorsed:—Assignment of Errors. Filed Sep. 25, 1919.

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303 (DEFENDANT, C. W. LANES', ASSIGNMENT OF ERRORS).

United States District Court, for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,
vs. No. 1153 In Equity.
C. W. Lane, Board of Commissioners Caddo Levee District, Producers Oil Company and The Texas Company, Defendants.

Now comes C. W. Lane, one of the defendants in the above cause, by his solicitors, Foster, Looney and Wilkinson, and say that the decree entered in the above cause on the 4th day of August, 1919, is erroneous, unjust and prejudicial to this defendant, and in connection with his petition for an appeal, and for specification of said errors, shows:

I.

That the Court erred in finding that the land involved was public land of the United States.

II.

That the Court erred in finding that the land was not swamp and overflowed land, which passed to the State under the Acts of Congress of 1849 and 1850, known as the Swamp Land Acts.

III.

That the Court erred in not finding that the land was of the character contemplated by the above acts inasmuch as the only evidence of the character of the land was that furnished by the evidence of Professor Janes, Ecologist, which showed that the land was overflowed, having been originally forest land subsequently covered with water in that permanent way described in said Acts.

IV.

That the Court erred in holding that counsel had admitted that this case was governed by the finding in United States vs. Jeems Bayou Fishing and Hunting Club, et al., or that this cause fell into the same class as that suit.

Wherefore, defendant prays that the said decree entered by the United States District Court for the Western District of Louisiana, be reversed.

FOSTER, LOONEY & WILKINSON,
Solicitor for C. W. Lane.

304 FRANK J. LOONEY, Of Counsel.

Indorsed:—Assignment of Errors in Behalf of C. W. Lane, one of the Defendants. Filed Sep. 25, 1919.

305 SUPERSEDEAS BOND ON APPEAL.

In the District Court of the United States, for the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1153 In Equity.

C. W. Lane, Producers Oil Company, The Texas Company, Board of Commissioners, Caddo Levee District, Defendants.

Know all men by these presents: that we, C. W. Lane, Producers Oil Company, The Texas Company and the Board of Commissioners of the Caddo Levee District, as principal, and United States Fidelity & Guaranty Company, of Baltimore, Maryland, as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above cause, in the full sum of Thirty-five Thousand ($35,000.00) Dollars, for the payment of which, well and truly to be made, we hereby bind ourselves, our successors and legal representatives, firmly and in solido.

Dated at Shreveport, Louisiana, on this the .... day of August, 1919.

The condition of the above obligation is such that,

Whereas, on the 4th day of August, 1919, in the District Court of the United States for the Western District of Louisiana, in a suit pending in that Court wherein the United States of America was plaintiff and C. W. Lane, Producers Oil Company, The Texas Company, and Board of Commissioners of the Caddo Levee District were de-

fendants, numbered on the Equity docket as 1153, a decree was rendered and signed against the said C. W. Lane, Producers Oil Company, The Texas Company, and Board of Commissioners of the Caddo Levee District, and the said C. W. Lane, Producers Oil Company and Board of Commissioners of the Caddo Levee District, having obtained an appeal with supersedeas to the United States Circuit Court of Appeals for the Fifth Circuit.

306 Now, if the said C. W. Lane, Producers Oil Company, The Texas Company, and Board of Commissioners of the Caddo Levee District shall prosecute such appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

PRODUCERS OIL COMPANY,
By HAMPDEN STORY,
Atty. at Law.

THE TEXAS COMPANY,
By HAMPDEN STORY,
Atty. at Law.

BOARD OF COMMISSIONERS
CADDO LEVEE DISTRICT,
By W. A. KERLEY, Secty.

C. W. LANE,
By FRANK J. LOONEY,
Atty.

THE UNITED STATES FIDELITY & GUARANTY CO., OF MARYLAND,
By GLENN N. WALKER,
(Seal) Attorney in Fact.

Approved:
This 3 day of Sept., 1919.
RUFUS E. FOSTER,
United States District Judge.

Indorsed:—Supersedeas Bond. Filed Sept. 25, 1919.

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307 (PLAINTIFF'S PETITION, ASSIGNMENT OF ERRORS AND ORDER OF APPEAL).

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,

vs. No. 1153 In Equity.

C. W. Lane, et al.

To the Honorable, the Judge of the District Court of the United States, for the Western District of Louisiana:

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, and with respect represents:

That on August 4, 1919, this Court entered a final decree in said cause, from which the defendants herein have appealed, and that in said decree there was, in part, error greatly to the prejudice and injury of plaintiff, as will more fully appear by the assignment of errors filed herewith. Plaintiff desires to take a cross-appeal from said decree to the United States Circuit Court of Appeals of the Fifth Circuit.

Wherefore, it is prayed that a cross appeal may be allowed to plaintiff in this cause from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, and that proper orders for the allowance of such appeal may be made by this Court.

ROBERT A. HUNTER,
Special Assistant to the
Attorney General.

ORDER.

The foregoing petition for a cross appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed a cross-appeal
308 herein, from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 10 day of Nov., 1919.

RUFUS E. FOSTER,
United States Judge.

ASSIGNMENT OF ERRORS ON PLAINTIFF'S CROSS APPEAL

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1153, In Equity.
C. W. Lane, et al.

Now comes plaintiff, the United States of America, and in connection with its petition for a cross appeal herein, presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to-wit:

I.

The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counter-claim of the Producers Oil Company, for costs and expenses incurred in producing said oil, and in not entering a decree in favor of plaintiff for the total value of said oil.

II.

The Court erred in allowing to said defendant, as an offset or counter-claim, the cost of the production of said oil and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had
309 been withdrawn from any appropriation whatever by orders of the President of the United States, dated, respectively, December 15, 1908, and July

2, 1910, which orders were issued for the purpose of conserving the public interest and in aid of pending and proposed legislation. The said well was drilled in violation of each of said orders and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said well.

III.

The Court erred in applying herein the rules relating to a case of innocent trespass, for the reason that there was no evidence to show that the defendants acted in good faith in extracting and removing the oil in question.

IV.

The Court further erred, in any event, in finding and holding that said defendants were entitled to deduct from the value of the oil extracted from the land in suit, the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit or counterclaim herein.

Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim for the cost of drilling, equipping and operating the well in suit, and that a decree be rendered and entered, in favor of plaintiff herein, for the full value of the oil extracted and removed from the land in controversy, as shown by the report of the Master in Chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to enter a decree in favor

of the plaintiff for the full value of said oil, without offset or deduction of any kind.

310 Plaintiff further prays, that, in any event, the costs of drilling and equipping said well be deducted and excluded from any allowance that may be made to defendants as an offset or counterclaim herein.

Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Petition for Cross Appeal, Order thereon, and Assignment of Errors. Filed Nov. 12, 1919.

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311 STIPULATION OF COUNSEL.

In the District Court of the United States for the Western District of Louisiana.

United States v. C. W. Lane, et al., No. 1153.
United States v. Charles J. Greene, et al., No. 1155.
United States v. Jeems Bayou Fishing & Hunting Club, et al., No. 1157.
United States v. Gulf Refining Company of Louisiana, No. 1158.
United States v. W. H. Enders, et al., No. 1160.
United States v. Southwestern Gas & Electric Co., et al., No. 1162.
United States v. J. M. Walling, et al., No. 1163.
United States v. Mrs. Jessie M. LaRobadierre, et al., No. 1164.
United States v. A. C. Loucks, et al., No. 1165.

In the above numbered and entitled suits it is agreed by and between counsel for all parties as follows, to-wit:

That, whereas, there have been sent up to the United States Circuit Court of Appeals certain maps and exhibits in the original for reproduction in each of the several transcripts, namely:

1. Plat of survey made by A. W. Warren, Deputy Surveyor, approved August 31, 1839.

2. Field notes of the Warren survey.

3. Resurvey plat of Township 20 North, Range 16 West, approved by the Commissioner of the General Land Office, July 24, 1916.

4. Supplemental plat of Township 20 North, Range 16 West, approved March 28, 1917, by the Commissioner of the General Land Office.

5. Supplemental Topographic Plat of Township 20 North, Range 16 West, approved March 28, 1917, by the Commissioner of the General Land Office.

6. Illustrative profile, marked Plaintiff's Exhibit F.

Whereas, all of the above suits have been appealed from the United States District Court for the Western District of Louisiana to the United States Circuit Court of Appeals for the Fifth Circuit, and all of said plats and exhibits, with the exception of the illustrative profile above mentioned, were included in the original in the

transcript of appeal in the suit entitled United
312 States v. Jeems Bayou Fishing & Hunting Club, et al., No. 1157; and,

Whereas, exhibits numbered one to five, inclusive, are applicable to all of said suits, and exhibit No. 6 is applicable to suits Nos. 1153, 1158, 1162, 1163 and 1164; and,

Whereas, the cost of reproducing and incorporating the said exhibits in the several transcripts will be very large; now, therefore:

It is agreed that in lieu of reproducing and including the said exhibits in the respective transcripts, the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit may bind or fasten together, in such manner as he may deem proper the said plats and exhibits and index the same so that ready reference may be had to them in the cases to which they are applicable.

It is further agreed that the said exhibits shall be deemed and considered as a part of the records on appeal in each of the said suits, as far as applicable thereto, to the same extent as if the exhibits mentioned had been reproduced and incorporated in the several transcripts.

It is further agreed that this stipulation shall be printed in each of the transcripts of appeal heretofore filed in the United States Circuit Court of Appeals for the Fifth Circuit in suits No. 1157, 1155, 1160 and 1165.

It is further agreed that a duplicate of this stipulation shall be filed in the United States District Court for the Western District of Louisiana, and shall be copied into

the transcript of appeal in suit No. 1153, entitled, United States v. C. W. Lane, et al., the record in which case will, by stipulation, be made part of the record on appeal in suits Nos. 1158, 1162, and 1163 and 1164.

Thus done and signed, in duplicate this 18 day of May, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.

313

FOSTER, LOONEY & WILKINSON,
BLANCHARD, GOLDSTEIN & WALKER,
WILKINSON, LEWIS & WILKINSON,
HAMPDEN STORY,
THIGPEN & HEROLD,
CLEM RATCLIFF,
BARNETTE & BLANCHARD,
S. M. COOK,
Attorneys for all Defendants.

J. L. PUGH,
Atty. for Standard Oil Co. of La.

Indorsed:—Filed May 19, 1920. W. B. Lee, Clerk.

314 (AGREEMENT AS TO TRANSCRIPT).

In the District Court of the United States for the Western District of Louisiana.

United States v. C. W. Lane, et al., No. 1153.
United States v. Gulf Refining Company of Louisiana, No. 1158.
United States v. Southwestern Gas & Electric Co., et al., No. 1162.
United States v. J. M. Walling, et al., No. 1163.
United States v. Mrs. Jessie M. LaRobadierre, et al., No. 1164.

The above numbered and entitled cause coming on to be heard on the application of the parties for settlement of the record on appeal;

And it appearing to the Court that the said suits were consolidated for the purpose of trial, and it having been agreed by counsel that the said suits should be sent up on appeal in one transcript;

And it further appearing to the Court that there is a conflict between the praecipe filed by defendants and the praecipe filed by plaintiff with respect to the contents of the record on appeal in the cases that have heretofore been appealed, and all of said suits having now been appealed;

And it further appearing to the Court that the evidence offered in said consolidated cases is not voluminous, and is of a technical character;

And it further appearing to the Court that the inclusion of all of said suits in one transcript containing the

entire record will facilitate the hearing of said cases on appeal;

And counsel for the respective parties having consented thereto;

It is ordered that the Clerk of Court shall incorporate all of said cases in one transcript, which shall include the testimony in the exact words of the witnesses and the entire record, with the exception of such portions of said record and exhibits that may, by agreement of counsel, be eliminated.

Thus done and signed this 1st day of January, 1920.

RUFUS E. FOSTER,
United States Judge.

315 O.K.

ROBERT A. HUNTER,
HAMPDEN STORY,
J. D. WILKINSON,
THIGPEN & HEROLD,
By S. L. HEROLD.
FOSTER, LOONEY & WILKINSON,
WILLIAM C. BARNETTE.

Indorsed:—Order Amending Praecipes. Filed Jan 3, 1920.

316 STIPULATION OF COUNSEL.

In the United States District Court, Western District of Louisiana.

No. 1153, United States v. C. W. Lane, et al.
No. 1158, United States v. Gulf Refining Company of Louisiana.
No. 1162, United States v. Southwestern Gas & Electric Co., et al.
No. 1163, United States v. J. M. Walling, et al.
No. 1164, United States v. Mrs. Jessie M. LaRobadierre, et al.

Counsel for plaintiff and defendants in all of the above suits do hereby enter into the following stipulation in connection with the order of Court signed January 1, 1920, which order relates to the contents of the records on appeal in said causes:

Whereas, said order was entered by consent of counsel for the purpose of reducing the size of the respective transcripts; and,

Whereas, the said order provides, among other things, that all of the causes therein referred to shall be included in one transcript, which counsel have since been advised cannot be done; and,

Whereas, it has been agreed to include in the transcript of appeal in case No. 1153, United States v. C. W. Lane, et al., certain testimony, exhibits, the Master's report, the opinion of the Court, and other things, which are applicable to all of the suits, and to make said transcript a part of the record on appeal in each of the other cases mentioned;

Now, therefore, it is stipulated that the purpose of said order has been subserved and carried out, and that the transcript prepared in accordance with the stipulation of counsel in the respective suit shall be deemed and construed as having been prepared in full compliance with said order.

It is further agreed that the said order of Court and this stipulation shall be copied into the transcript of appeal in the case entitled, United States v. C. W. Lane, et al., No. 1153, and, by reference as aforesaid, shall constitute a part of the record on appeal in each of the above suits.

Thus done and signed this 18 day of May, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.

FOSTER, LOONEY & WILKINSON,
THIGPEN & HEROLD,
HAMPDEN STORY,
WILKINSON, LEWIS & WILKINSON,
BARNETTE & BLANCHARD,
Attorneys for all defendants.

Filed May 19, 1920.

317 STIPULATION OF COUNSEL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,
vs. No. 1153.
C. W. Lane, et al.

Counsel for plaintiff and defendants do hereby enter into the following stipulation relative to the contents of the record on appeal in the above numbered and entitled cause.

The Clerk of Court shall prepare the transcript of appeal in this suit, and shall copy into and incorporate therein the following, to-wit:

1. Bill of Complaint.

2. Motion to dismiss by C. W. Lane.

3. Answers of Board of Commissioners of the Caddo Levee District, and Producers Oil Company.

4. Plaintiff's reply to set-off and counter-claim.

5. Answer of the Texas Company.

6. Motion to dismiss by the Texas Company.

7. Minutes of Court showing overruling of motions to dismiss.

8. Answer of C. W. Lane to bill of complaint.

9. Interrogatories propounded by plaintiff to Producers Oil Co., and the Texas Company.

10. Motion by the Texas Company to strike out interrogatories numbers 25, 26 and 27.

11. Answer of Producers Oil Company to interrogatories Nos. 25, 26 and 27.

12. Answer of Producers Oil Company to interrogatories.

13. Answer of Texas Company to interrogatories.

318 14. Order appointing E. H. Randolph Special Master in Chancery.

15. The note of evidence in full taken upon trial of merits before Master in Chancery.

16. Withdrawal order of December 15, 1908.

17. Telegram from Commissioner of General Land Office to Register and Receiver, dated December 15, 1908.

18. Letter from Commissioner of General Land Office to Register and Receiver, dated December 15, 1908.

19. Letter from Director Geological Survey to the Secretary of the Interior, dated Oct. 24, 1908.

20. Letter from Director of Geological Sruvey to Secretary of the Interior, dated Nov. 6, 1908.

21. Withdrawal Order of July 2, 1910.

22. Letter dated September 27, 1913, from Commissioner of General Land Office to Arthur D. Kidder, Supervisor of Surveys, marked plaintiff's exhibit C.

23. Letter, dated December 1, 1916, from Commissioner of General Land office to Arthur D. Kidder, Supervisor of Surveys, marked Plaintiff's Exhibit D.

24. Extract from the records of the Register of the State Land Office, signed by Fred J. Grace, Register, marked plaintiff's exhibit 21, in suit No. 1157.

25. Extract from records of the United States Land Office at Baton Rouge, La., offered by reference to case of United States v. Jeems Bayou Fishing & Hunting Club, No. 1157.

26. Copy of the records of the United States Surveyor General's Office for State of Louisiana, certified by Fred J. Grace, Register of the State Land Office, being Plaintiff's Exhibit 22, in suit No. 1157.

27. Extract from tract book relating to Section 3, Township 20 N. R. 16 W., marked plaintiff's Exhibit I.

28. Report of L. L. Janes, Ecologist, to the Commissioner of the General Land Office relative to Ferry Lake and the lands bordering thereon (to be sent up in the original).

29. Patent from the United States to the heirs of John A. Russell, marked Defendant's Exhibit No. 3.

30. Descriptive list of swamp and overflowed lands insofar as said list relates to Section 3, Township 20 North, Range 16 West, marked Defendant's No. 5.

31. Lease from Henry M. Russell, et al., to Producers Oil Company, marked Defendant 4.

319 32. Lease from Board of Commissioners of Caddo Levee District of C. W. Lane, marked Defendant's Ex. 6.

33. Assignment of said lease by C. W. Lane to Producers Oil Company, marked Defendant's Exhibit 7.

34. Agreement between C. W. Lane and Producers Oil Company as to royalties, marked Defendant's Exhibit 8.

35. Statement identified by the witness, James N. Neal, marked Defendant's Exhibit No. 1, omitting eight typewritten pages thereto annexed.

36. The report, in full, of E. H. Randolph, Master in Chancery, in Class A Suits.

37. The Texas Company's exceptions to Master's report.

38. Producers Oil Company and Caddo Levee Board's exceptions to Master's report.

39. C. W. Lane's exceptions to Master's report.

40. Plaintiff's exceptions to Master's report.

41. Opinion of the Court in full.

42. Final decree.

43. Defendant's petition and order of appeal, assignment of errors and appeal bond.

44. Plaintiff's petition for cross appeal, order of appeal and assignment of errors.

45. Duplicate stipulation of counsel relative to exhibits in this and other cases, sent up in the original, which stipulation is dated May ...., 1920, and filed herewith. It is agreed that the plats and exhibits referred to in said stipulation, namely: Plat of survey made by A. W. Warren, Deputy Surveyor, approved August 31, 1839; field notes of the Warren Survey; Resurvey Plat of Township 20 North, Range 16 West, approved by the Commissioner of the General Land Office, July 24, 1916; Supplemental Plat of Township 20 North, Range 16 West, approved March 28, 1917, by the Commissioner of the General Land Office; Supplemental Topographic Plat of Township 20 North; Range 16 West, approved March 28, 1917, by the Commissioner of the General Land Office; Illustrative Profile, marked plaintiff's Exhibit F, shall be deemed and considered as a part of the record on appeal in this cause.

46. Order of Court relative to contents of record on appeal, together with agreement of counsel with respect to said order.

47. This stipulation.

Thus done and signed this 18 day of May, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.

320 BARNETTE & BLANCHARD,
THIGPEN & HEROLD,
FOSTER, LOONEY &
WILKINSON,
HAMPDEN STORY,
Attorneys for Defendants.

Filed May 19, 1920. W. B. Lee, Clerk.

CERTIFICATE.

I, W. B. LEE, Clerk of the District Court of the United States for the Western District of Louisiana, Fifth Circuit, do hereby certify that the foregoing three hundred and twenty pages contain and form a full, true, correct and complete transcript of the record, assignment of errors and all proceedings had in a cause wherein The United States of America, is Complainant, and C. W. Lane, et al., are Defendants, No. 1153 in Equity on the docket of said Court, as fully as the same remains on file and of record in my office at Shreveport, Louisiana—this transcript having been prepared in accordanre with stipulation of counsel, a copy of which accompanies this transcript.

Witness my hand officially and the seal of said Court, at the City of Shreveport, Louisiana, on the 21 day of May, A. D. 1920.

(Seal) W. B. LEE,
Clerk, United States District Court,
Western District of Louisiana.

Citations omitted from the printed record, being filed in the original.

* * * * * * * * *

391 That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and submission.

Extract from the minutes of February 24th, 1921.

C. W. LANE ET ALS.
versus
THE UNITED STATES OF AMERICA, ETC. } No. 3536.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., special assistant to the Attorney General, for appellee and cross-appellant, and S. L. Herold, Esq., for appellants and cross-appellees, was submitted to the court.

Opinion of the court.

Filed June 22nd, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3536.

C. W. LANE ET AL., APPELLANTS AND CROSS-APPELLEES,

versus

THE UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT.

No. 3537.

GULF REFINING COMPANY OF LOUISIANA, APPELLANT AND CROSS-appellee.

versus

THE UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT.

392 No. 3538.

SOUTHWESTERN GAS & ELECTRIC COMPANY ET AL., APPELLANTS AND CROSS-APPELLEES,

versus

THE UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT.

No. 3539.

GULF REFINING COMPANY OF LOUISIANA ET AL., APPELLANTS AND CROSS-APPELLEES,

versus

THE UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT.

No. 3540.

THE UNITED STATES OF AMERICA, APPELLANT,

versus

MRS. JESSIE M. LA ROBADIERRE ET AL., APPELLEES.

Appeals and cross-appeals from the District Court of the United States for the Western District of Louisiana.

S. L. Herold, J. A. Thigpen (D. Edward Greer, Hampden Story and J. D. Wilkinson on the brief), for appellants and cross-appellees in Nos. 3536, 3537, 3538, and 3539.

Robert A. Hunter, special assistant to the Attorney General, for appellee and cross-appellant in Nos. 3536, 3537, 3538, and 3539.

Robert A. Hunter, special assistant to the Attorney General, for appellant in No. 3540.

S. L. Herold, J. A. Trigpen (D. Edward Greer, Hampden Story and J. D. Wilkinson on the brief), for appellees in No. 3540.

393 Before Walker, Bryan, and King, circuit judges.

BRYAN, *Circuit Judge:*

These suits were brought by the United States to recover several small tracts of land in Caddo Parish, Louisiana, and also to compel an accounting for oil and gas produced therefrom by appellants. The lands lie in separate tracts along the edge of Ferry Lake in township 20, north of range 16 west, Louisiana meridian. This township was first surveyed in 1839 by United States Deputy Surveyor A. W. Warren, and the plat filed by him represents several fractional sections bordering on the lake. According to that plat the lands in litigation were included within these fractional sections.

Because of the discovery of oil thereon the township was resurveyed in 1917, under the direction of Arthur D. Kidder, supervisor of surveys for the General Land Office. By this later survey the lands in litigation are represented as lying between the meander lines of Warren's survey and Ferry Lake and are designated as new subdivisions omitted from Warren's survey.

The fractional sections surrounding the lake had been sold and patented from time to time and acquired by appellants long before the resurvey of 1917 was made.

There are no disputed questions of fact. It was admitted by stipulation that Kidder's survey was accurately made, and that Kidder correctly reestablished and reproduced Warren's survey; that the contour line of Ferry Lake, at mean high water, in 1812, when Louisiana was admitted into the Union; in 1839, when Warren made his survey; and in 1917, when Kidder made his survey, was 173.09 feet above mean Gulf level; that all the tracts of land in litigation lie above that elevation, and are upland in character; and that Ferry

Lake is, and was in 1812 and 1839, a navigable body of water.
394 It was also shown beyond question that Warren in his survey ran the section lines to, and accurately established corners and set meander posts on, the contour line of Ferry Lake.

In running out his meander lines, Warren did not always follow the exact contour of the lake, but he approximated it very closely in so far as the lands involved in these suits are concerned. In some instances irregular areas of land which jut out into the water are outside the meander lines, and in other instances where the land sharply recedes water is inside the meander lines. Very little difference in acreage between the land so excluded and the water so included is shown by the testimony. In at least one of the cases the area of water included exceeds the area of land excluded.

In the first mentioned of these suits Warren's survey represents the land in that fractional quarter-quarter section as containing 26.80 acres; Kidder's survey adds as a new subdivision 5.67 acres. In the second suit, Warren's survey represents 114.80 acres; Kidder's survey adds 11.49 acres. In the third suit, Warren's survey represents 155 acres; Kidder's survey adds 27.87 acres. In the fourth suit, Warren's survey represents 23 acres; Kidder's survey adds 12.72 acres. In the fifth and last suit, Warren's survey represents 83.75 acres; Kidder's survey adds 22.71 acres. It is for these additional acres the Government sues.

The cases were consolidated, and the court entered decrees sustaining the right of the Government to recover the lands and also holding appellants liable to account for various amounts realized from the sale of oil and gas, but allowing credit for the costs of production. The Government by cross-appeal in the first, second, third, and fourth suits contends that appellants should not be allowed
395 to deduct these expenses, but should be held liable as wilful trespassers. In the fifth suit, that of United States v. La Robadierre and the Gulf Refining Co., No. 3540, the original defendants have not appealed, but the Government by direct appeal assigns as error the deduction of expenses of operation and the failure to hold the Gulf Refining Co. liable in solido with the other defendant.

It is the contention of the United States that the lands in litigation, lying between the meander lines of Warren's survey and Ferry Lake, are public lands which were never surveyed until 1917. Appellants, on the other hand, assert title as owners of the fractional sections.

Section 2396 of the Revised Statutes deals with the boundaries and contents of public lands and provides that boundary lines shall be ascertained by running straight lines from established corners to opposite corresponding corners, except that in those portions of a fractional township where corresponding corners cannot be fixed the boundary lines shall be ascertained by running from established corners "to the watercourse, Indian boundary lines, or other external boundary of such fractional township." There is no other

provision of law for the running of meander lines along a watercourse, but they are usually run by surveyors for the purpose of computing acreage. It is proper that they should show the sinuousities of the banks of the watercourse; for the watercourse and not the meander line is the true boundary. St. Paul & P. Railroad Co. v. Schurmeir, 7 Wall. 272; Hardin v. Jordan, 140 U. S. 371; Mitchell v. Smale, 140 U. S. 406; Producers Oil Co. v. Hanzen, 238 U. S. 325.

It was Warren's duty to bound the fractional sections on the lake, and it is apparent from his survey and field notes that it was his intention to do so. The survey is not invalidated by the failure
396 to include within the meander lines small, irregular areas of land. In Mitchell v. Smale, supra, the survey called for 4.53 acres, but it was held that title to 25 additional acres also passed by the patent. In that case the Supreme Court said:

"The difficulty of following the edge or margin of such projections and all the various sinuosities of the water line is the very occasion and cause of running the meander line, which by its exclusions and inclusions of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream. The official plat made from such survey does not show the meander line, but shows the general form of the lake deduced therefrom and the surrounding fractional lots adjoining and bordering on the same. The patents when issued refer to this plat for identification of the lots conveyed and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed, and all the legal consequences of such a boundary in the matter of riparian rights and title to land under water regularly follow."

Meander lines and not watercourses are held to be boundaries where there is no body of water within a reasonable distance therefrom, as in Horne *v.* Smith, 159 U. S., 40; Producers Oil Co. *v.* Hanzen, supra; or where there is no body of water at all, as in French-Glenn Live Stock Co. *v.* Springer, 185 U. S., 47; Gauthier *v.* Morrison, 232 U. S., 452; Chapman & Dewey Lumber Co. *v.* St. Francis Levee District, 232 U. S., 186; and Lee Wilson & Co. *v.*
397 United States, 245 U. S., 24; or where there is gross fraud, as in Security Land & Exploration Co. v. Burns, 193 U. S. 167. These cases are relied upon by the Government, but in our opinion they are inapplicable to the facts under consideration. In none of the cases cited on the Government's briefs is the rule stated in Mitchell v. Smale overruled or even modified; but, on the contrary, in several of them that case is cited with approval. Here the watercourse was in existence and was actually meandered. There is no suspicion or suggestion that Warren's survey of the lands in litigation was fraudulent. That part of his survey which is in question in these cases was made with a fair degree of accuracy

and for the purposes of computing the acreage and of showing the sinuosities of Ferry Lake as a boundary. It is not impeached by the fact that a subsequent survey, made with great minuteness because of the discovery of oil, disclosed comparatively slight variations from the established boundary.

There being no appeal by the original defendants in United States vs. La Robadierre et al., No. 3540, the decree in that case is affirmed. In the other cases the decrees are reversed on the original appeals, with directions to dismiss the bills of complaint; and the cross-appeals are dismissed.

398 *Judgment.*

Extract from the Minutes of June 22nd, 1921.

C. W. LANE ET ALS.
versus
THE UNITED STATES OF AMERICA, ETC. } No. 3536.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said District Court in this cause be, and the same is hereby, reversed on the original appeal, with directions to dismiss the bill of complaint; and that the cross-appeal sued out herein be, and the same is hereby, dismissed.

399 *Petition for appeal and order allowing same.*

Filed August 20, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

C. W. LANE ET AL., APPELLANTS AND CROSS-APPELLEES,
versus
UNITED STATES OF AMERICA, APPELLEE AND CROSS-appellant. } No. 3536.

To the Honorable, the Judges of the United States Circuit Court of Appeals in and for the Fifth Circuit:

Now into this honorable court comes the United States of America, appellee and cross-appellant, and says that on June 22, 1921, this court entered a decree herein in favor of appellants and cross-appellees and against the United States of America, in which decree there was error greatly to the prejudice and injury of appellee and cross-appellant, as will more fully appear by the assignment of errors, which is attached hereto and filed herewith.

Wherefore, the United States of America prays that an appeal may be allowed in said cause from this court to the Supreme Court of the United States and that proper orders for the allowance of such an appeal be made by this court.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

ORDER.

The foregoing petition for an appeal in the above numbered and entitled cause from the United States Circuit Court of Appeals of the Fifth Circuit to the Supreme Court of the United States
400 being considered, and the assignment of errors being attached thereto and filed therewith, it is ordered:

That an appeal be granted and allowed in the above numbered and entitled cause to the United States of America as prayed for from the United States Circuit Court of Appeals of the Fifth Circuit to the Supreme Court of the United States.

Thus done and signed this 15th day of August, 1921.

(Signed) R. W. WALKER,
Judge, United States Circuit Court of Appeals, Fifth Circuit.

Assignment of errors.

Filed August 20th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

C. W. LANE ET AL., APPELLANTS AND CROSS-APPELLEES,
versus
UNITED STATES OF AMERICA, APPELLEE AND CROSS-appellant. } No. 3536.

Now comes the United States of America, appellee and cross-appellant in the above numbered and entitled cause, and in connection with the petition for an appeal herein presents this assignment of errors and says that the opinion and decree entered in this cause by the United States Circuit Court of Appeals of the Fifth Circuit on June 22, 1921, is erroneous in the following particulars, to wit:

1.

The court erred in holding that according to the plat of survey made by A. W. Warren, United States deputy surveyor,
401 the lands in litigation were included within the fractional sections represented by said plat as bordering upon Ferry Lake, whereas the court should have held that the tracts involved in said consolidated suits were not included within said fractional sections as delineated upon said plat but were represented thereon only as a part of Ferry Lake and not as a part of any fractional section shown on said plat.

2.

The court erred in holding that said survey of A. W. Warren was made with a fair degree of accuracy for the purpose of computing the acreage and the sinuosities of the lake as a boundary;

whereas the court should have held that there was manifest error in said survey or a material variation between the lines thereof and Ferry Lake; that said survey did not follow the sinuosities of the lake shore, or approximate its contour, or afford a reliable means of ascertaining the quantity of land in said fractional section.

3.

The court erred in holding that the said A. W. Warren intended to make the said lake the boundary of the land in suit, whereas the court should have held that the record of said survey does not show that the lines thereof were run with the meander or along the margin of said lake, and that, as actually made upon the ground, the lines of said survey were not run with the meander or along the margin of said lake.

4.

The court erred in not holding that said tract was, at the time of and since said survey, high land in place, covered with native
402 forest trees and vegetation characteristic of hill land, and was of the same character, geological formation, and quality as the lands included by said Warren in his survey.

5.

The court erred in not holding that, inclusive of the land in suit, the said A. W. Warren omitted from his survey of the township 987.77 acres of high land in place between the so-called meander line and the mean high water elevation of Ferry Lake as it existed when the State of Louisiana was admitted into the Union and when said survey was made, and which mean high water elevation was known to said surveyor.

6.

The court erred in failing to hold that the tract in controversy was not included in said survey, either in fact or in law, and was not described or embraced in the patent relied upon by defendants.

7.

The court erred in holding that there were no disputed issues of fact and in overruling the findings of fact made by the master in chancery herein and approved by the district judge, including the finding that the land in suit was left unsurveyed by the said A. W. Warren and belonged to the public domain of the United States.

8.

The court erred in reversing the decree of the District Court in so far as same was favorable to the United States and in remanding said cause to the District Court with directions to dismiss the bill of complaint.

9.

403 The court erred in dismissing the cross-appeal and in n
reversing the decree of the District Court in so far as
allowed the defendants to offset the cost of drilling the wells again
the value of the oil extracted from the land in suit, and in not r
manding said cause with directions for the entry of a decree
favor of the plaintiff for the full value of the oil, less only the e
penses incurred by defendants in operating the wells.

Wherefore, the United States of America, appellee and cross-appe
lant, prays that the opinion and decree of the United States Circu
Court of Appeals for the Fifth Circuit be reversed; that the decr
of the District Court be affirmed in so far as it is favorable to t
United States of America; that the said cause be remanded wit
directions for the entry of a decree in favor of the United States
America for the full value of the oil taken by defendants from sai
land, less only the cost of operating the wells, and excluding an
disallowing as an offset or credit against the value of said oil th
sums expended or costs incurred by defendants in drilling said well
to the end that the United States may recover the value of said o
free of all costs incurred in discovering or reaching the same; an
for general relief.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

*Stipulation as to transcript and original exhibits filed August 20t
1921.*

In the United States Circuit Court of Appeals, Fifth Circuit.

404 C. W. LANE ET AL., APPELLANTS AND CROSS-APPELlees,
versus
UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELlant. } No. 3536

GULF REFINING COMPANY OF LOUISIANA, APPELLANT AND cross-appellee,
versus
UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELlant. } No. 3537

SOUTHWESTERN GAS & ELECTRIC COMPANY, ET AL., APPELlants and cross-appellees,
versus
UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELlant. } No. 3538

GULF REFINING COMPANY OF LOUISIANA, ET AL., appellants and cross-appellees,
versus
UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT.
No. 3539.

With regard to the appeals to be taken in the above numbered and entitled causes by the United States to the Supreme Court of the United States, it is stipulated by counsel for all parties as follows, to wit:

1. That the transcripts of appeal shall be made up of the printed records filed in the United States Circuit Court of Appeals with the addition thereto of the proceedings had in said Court of Ap-
405 peals, and all stipulations of counsel contained in said printed records shall be applicable to these appeals.

2. That all exhibits transmitted to the Supreme Court of the United States in the original in connection with the Appeal in case No. 3522, entitled "Jeems Bayou Fishing & Hunting Club, et al., v. United States (No. 407 on the docket of the Supreme Court of the United States), and which were offered in evidence and constitute part of the record in these suits, shall be deemed and considered as a part of the record on appeal in the above suits; said exhibits being as follows: Plat of survey made by A. W. Warren, deputy surveyor, approved August 31, 1839; field notes of Warren survey; resurvey plat of township 20 north, range 16 west, approved by the Commissioner of the General Land Office July 24, 1916; supplemental topographic plat of township 20 north, range 16 west, approved March 28, 1917.

There shall also be sent up in the original the illustrative profile marked "Plaintiff's Exhibit F," and the report of L. L. Janes, ecologist.

3. A copy of this stipulation shall be incorporated in each of the records on appeal.

Thus done and signed this August 17, 1921.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

(Signed) J. A. THIGPEN,
S. L. HEROLD,
FOSTER, LOONEY & WILKINSON,
FRANK J. LOONEY,
HAMPDEN STORY,
J. W. WILKINSON,
Attorneys for Appellants and Cross-Appellees.

406 *Clerk's certificate.*

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 391 to 405 next preceding this certificate contain full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said court, numbered 3536, wherein C. W. Lane, Producers Oil Company, the Texas Company, and Board of Commissioners of Caddo Levee District are appellants and cross-appellees, and the United States of America is appellee and cross-appellant, as full, true, and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 390 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

I further certify that the plaintiff's Exhibit "F," Illustrative Profile, and the Report of L. L. Janes, ecologist, forwarded to this court in the original, are transmitted herewith to the Supreme Court of the United States in the original, as per stipulation of counsel copied at page 403 of this record.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the city of New Orleans, Louisiana, in the Fifth Circuit, this 24th day of August, A. D. 1921.

[SEAL.] FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

407 THE UNITED STATES OF AMERICA:

The President of the United States, to C. W. Lane, Producers Oil Company, the Texas Company, and Board of Commissioners of the Caddo Levee District, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a petition and order of appeal and assignment of errors sued out and filed in the clerk's office of the United States Circuit Court of Appeals for the Fifth Circuit in the cause wherein C. W. Lane, Producers Oil Company, the Texas Company, and Board of Commissioners of the Caddo Levee District are appellants and cross-appellees, and the United States of America is appellee and cross-appellant, bearing the number 3536 on the docket of the United States Circuit Court of Appeals for the Fifth Circuit, and being entitled in said court as follows: C. W. Lane, Producers

Oil Company, the Texas Company, and Board of Commissioners of the Caddo Levee District, appellants and cross-appellants, versus the United States of America, appellee and cross-appellant, to show cause, if any there be, why the decree rendered against the said the United States of America and in said petition and order of appeal and assignment of errors mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Howard Taft, Chief Justice of the United States, this 15th day of August, in the year of our Lord one thousand nine hundred and twenty-one.

[SEAL.]

R. W. WALKER,
United States Circuit Judge.

408 Service of the within citation of appeal accepted and acknowledged this 19th day of August, 1921.

J. A. THIGPEN,
S. L. HEROLD,
FOSTER, LOONEY & WILKINSON,
FRANK J. LOONEY,
HAMPDEN STORY,
Attorneys of record for appellants and cross-appellees.

No. 3536. United States Circuit Court of Appeals, Fifth Circuit. C. W. Lane, Producers Oil Company, the Texas Company, and Board of Commissioners of Caddo Levee District, appellants and cross-appellees, vs. the United States of America, appellee and cross-appellant. Citation. Filed 20 day of August, 1921. Frank H. Mortimer, clerk of the United States Circuit Court of Appeals.

(Indorsed on cover:) File No. 28,455. U. S. Circuit Court of Appeals, 5th Circuit. Term No. 500. The United States of America, appellant, vs. C. W. Lane, Producers Oil Company, the Texas Company et al. Filed August 31st, 1921. File No. 28,455.

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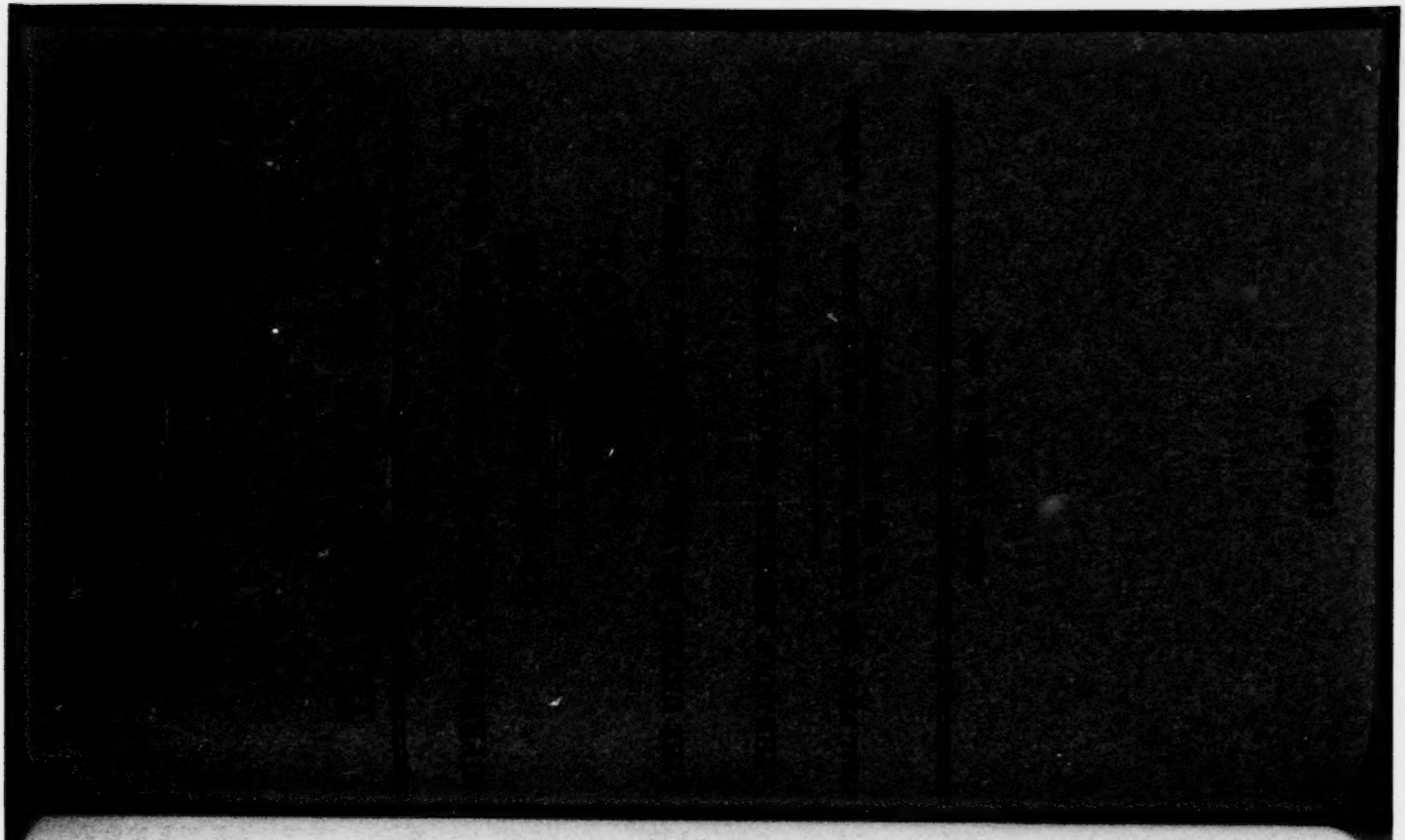

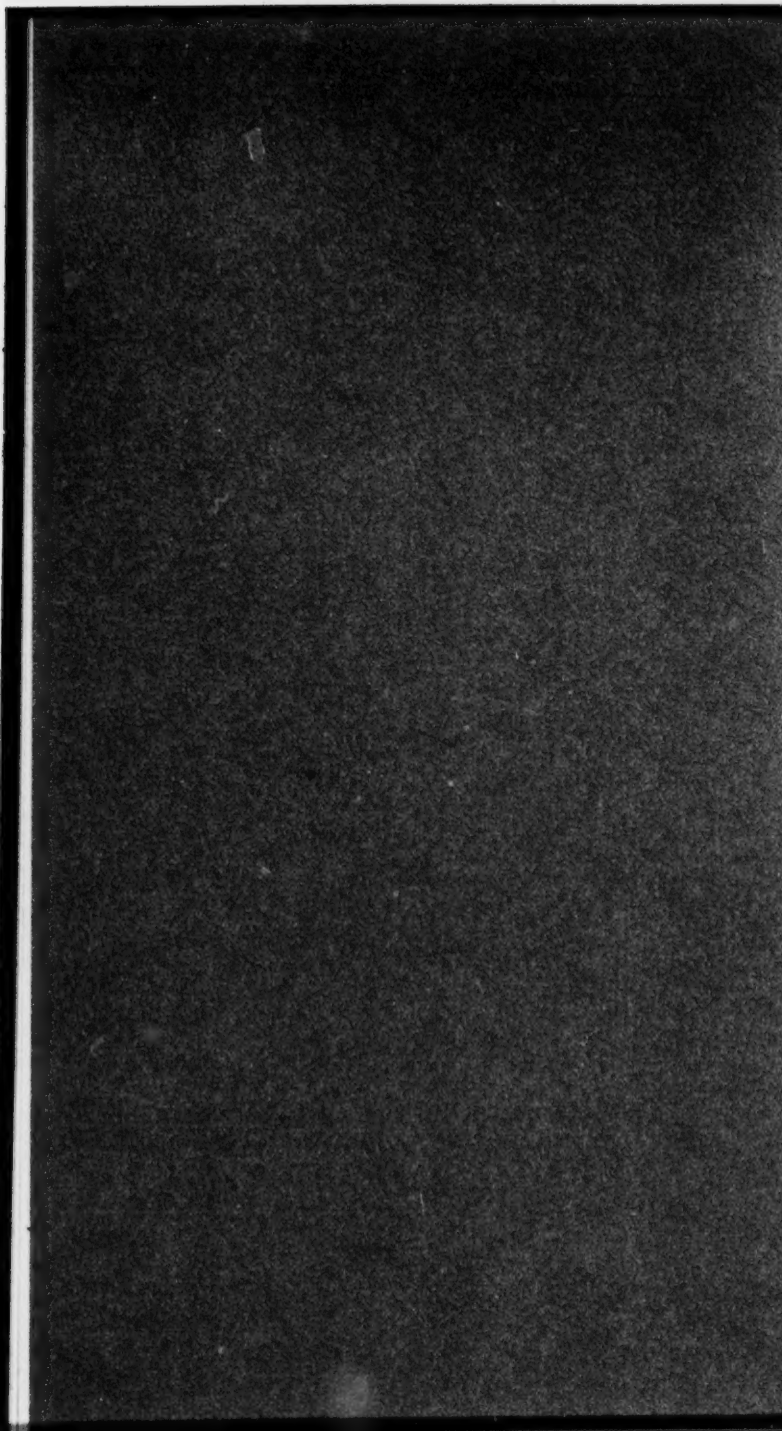

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 501.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE GULF REFINING COMPANY OF LOUISIANA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, Circuit Judges:

GULF REFINING COMPANY OF LOUISIANA, APPELLANT and cross-appellee,
versus
THE UNITED STATES OF AMERICA, APPELLEE AND cross-appellant.

Be it remembered, that heretofore, to wit, on the 25th day of May, A. D. 1920, a transcript of the record in the above-styled cause, pursuant to an appeal and cross-appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the clerk of said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3537, as follows, to wit:

and contrary to its laws, and without any valid title, lawful right or authority, the defendant herein, in bad faith, entered upon and took possession of the tract particularly described in paragraph I hereof, for the purpose of drilling thereon for oil and gas, and did so drill one well known as "Levee Board Fee No. 10," and did withdraw therefrom large quantities of oil and gas, the exact
3 amount and value of which is unknown, all to the great and irreparable injury of plaintiff.

IV.

That on and prior to the dates of the withdrawal orders hereinabove set forth, to-wit: December 15, 1908 and July 2, 1910, neither the said defendant, nor any one from whom the defendant claims, was in possession of said land, or a bona fide occupant thereof in diligent prosecution of work thereon leading to a discovery of oil or gas, and no such discovery was in fact made prior to said orders of withdrawal, nor until long after said orders were issued, and had become effective to withdraw said land from location, entry and other appropriation.

V.

Plaintiff is informed and believes that the oil and gas withdrawn from the said tract of land, as above set forth, were extracted therefrom under the color of a pretended sale made on February 27, 1909, by the Board of Commissioners of the Caddo Levee District to Sam W. Mason, as per an act of record in Book 57, page 11, of a certain tract of land which included the property herein involved, and which was sold by the said Sam W. Mason to B. R. Norvell, as per act recorded in Book 58, page 658, and transferred by the said Norvell to the Gulf Refining Com-

pany of Louisiana, defendant herein, by act of date July 30th, 1909, recorded in Book 57, page 174, said instruments having been recorded on the conveyance records of the Parish of Caddo, Louisiana.

Plaintiff states that neither the Gulf Refining Company of Louisiana, nor any of its vendors, acquired any title to said Lot One (1) of Section Twenty-four (24), the title to which has never passed out of the United States and that said deeds are null and void insofar as they affect the property in controversy herein.

Plaintiff avers that the said Gulf Refining Company of Louisiana has no right, title or interest in and to the said tract of land, but acting under the said pretended sale, and not otherwise, and subsequent to the withdrawal orders hereinabove referred to, entered upon the said tract of land, drilled a well thereon, as aforesaid, and took therefrom a large quantity of oil and gas, which it has converted to its own use and sold to parties unknown to plaintiff.

4

The exact quantity of oil and gas so produced, withdrawn from the land, marketed and sold, and the value thereof, being unknown to plaintiff, full discovery thereof from said defendant herein is sought.

VI.

Plaintiff avers that the defendant is now unlawfully trespassing upon the said land and is asserting claims thereto and will continue to do so; that said defendant will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

VII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of Five Thousand ($5,000.00) Dollars, and that defendant herein acted in bad faith in the premises.

VIII.

In consideration whereof and forasmuch as the plaintiff is without full, adequate and complete remedy in the premises save in a Court of equity, plaintiff prays:

1. That the said defendant be required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose its claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if it had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That the aforesaid sale made by the Board of Commissioners of the Caddo Levee District to Sam W. Mason, by him transferred to B. R. Norvell, and by the said Norvell to the Gulf Refining Company of Louisiana, as set forth in paragraph V of this bill, be declared null and void, and held for naught, insofar as the same include, directly or indirectly, the property in controversy in this cause, and to that extent that the said deeds be cancelled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendant, and that the possession of said land may be restored to the plaintiff.

5. That said defendant, during the progress of this cause, and finally and perpetually thereafter, may be enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon the plaintiff's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of boring and extracting, storing and transporting oil or gas, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by defendant wherein it shall make a full, complete, itemized and correct disclosure of the quantity of oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendant, all such sums so received by it, and all damages sustained by plaintiff in the premises.

8. That plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please the Court that an order be granted and entered, directed to the Gulf Refining Company of Louisiana, defendant herein, not an inhabitant of, or now within this District, and served as provided by
6 law, directing said defendant to appear and answer in this cause on a day certain to be designated by this Court.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Affidavit.

United States of America,
Northern District of California.

D. R. Thompson, being first duly sworn, deposes and says:

That he is Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location and all forms of appropriation by order of December 15, 1908, and July 2, 1910; and that from the examination of such lands, and from examination of the records of the General Land Office and of the Local Land Office in the State of Louisiana, he has know-

ledge of the facts set forth in the foregoing bill of complaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 5th day of July, 1917.

LYLE S. MORNS,

(Seal) Deputy Clerk United States District Court, Northern District of California.

7 ORDER.

The above and foregoing bill of complaint and affidavit b ing considered, and it appearing to the Court that the Gulf Refining Company of Louisiana is not an inhabitant of the Western District of Louisiana, and is domiciled outside of said District,

It is therefore, ordered that the said absent defendant be, and it is hereby, directed to appear, and answer to the above and foregoing bill of complaint at Shreveport, in the Western District of Louisiana, on the 10th day of September, 1917, at the hour of ten o'clock A. M., and that service of duly certified copy of the said bill of complaint and of this ord r be made on said defendant, wherever found.

Thus done and signed this 20 day of July, 1917.

RUFUS E. FOSTER,
United States Judge.

Indorsed: Bill of Complaint. Filed July 21, 1917.

8 (ANSWER)

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,
Plaintiff,
vs. No. 1158 In Equity.

Gulf Refining Company of Louisiana,
Defendant.

To the Honorable Judge of the District Court of the United States for the Western District of Louisiana, sitting within and for the Shreveport Division:

Defendant Gulf Refining Company of Louisiana appears now and answers the bill of complaint in the above entitled and numbered cause, as follows, to-wit:

I.

Defendant denies that on or before December 15th, 1908, or at any other time, that the plaintiff was the owner of the tract of land which plaintiff describes in its petition as Lot number One (1) of Section Twenty-four (24), in Township Twenty (20), North of Range Sixteen (16) West, Louisiana Meridian, situated in the Parish of Caddo, Western District of Louisiana, as shown by a plat of survey approved March 28th, 1917, by Clay Tallman, Commissioner of the General Land Office & Ex-Officio Surveyor General for the State of Louisiana; and defendant shows that there is not and never has been such a tract of land as Lot Number One of Section 24, Township 20 North, Range 16 West, Louisiana Meridian,

and that the purported survey showing such lot is illegal, null and void, and the execution and approval thereof beyond the power, jurisdiction or authority of the General Land Office of the United States, for the reason that the said tract of land was not at the date of said survey in the ownership of the United States but was in private ownership as hereinafter more fully appears.

Defendant, therefore, further denies that plaintiff was or is the owner or entitled to the possession of
9 the said land or of any oil, gas or other minerals therein contained.

II.

Defendant shows that all of the allegations of Article II of the bill of complaint are utterly immaterial and irrelevant to any of the issues involved in this case and that the same call for neither affirmation nor denial; but under reservation of its rights, defendant shows that the said land could not have been included in any withdrawal order because it was not at any of the dates referred to the property of the United States and, consequently, that the United States had no interest in the said property nor any right to affect the same by any withdrawal.

III.

Defendant denies that it entered upon and took possession of the property herein involved in violation of any of the rights of the plaintiff or contrary to its laws, or without any valid title, lawful right or authority, or in bad faith; but it avers that as sole, absolute and legal owner thereof, it took possession of the said property for the purpose of drilling thereon for oil and gas, and did so drill one well, known as "Levee Board Fee No. 10",

and produced therefrom some oil, the amount and value of which is set out further in this answer.

IV.

Defendant says that all the allegations of the fourth article of the bill of complaint are utterly irrelevant and immaterial to the issues of this case, for the reason that the said property is not nor was it at any of the dates referred to, the property of the United States; and that it does not claim the property under any discovery under the mining laws of the United States, but claims the property as owner, under a valid title, as hereinafter is fully set out.

V.

Defendant shows that it is the sole and absolute owner of the property which is referred to in the bill under the purported description set out in Article I of said bill, in which it is described by reference to the said illegal and unauthorized survey, under the following chain of title:

10 By act of sale from B. R. Norvell to the Gulf Refining Company of Louisiana, this defendant, of date July 30th, 1909, recorded in Book 57, page 174, of the records of Caddo Parish, Louisiana;

By act of sale from Sam W. Mason to B. R. Norvell, recorded in Book 58, page 658, of the records of Caddo Parish, Louisiana.

By act of sale from the Board of Commissioners of the Caddo Levee District, acting through the Governor of the State and the President of the Levee Board, to Sam

W. Mason, of date February 27th, 1909, recorded in Book 57, page 11, of the records of Caddo Parish, Louisiana;

And that the said Board of Commissioners of the Caddo Levee District acquired the said property under and by virtue of Act 160 of the General Assembly of the State of Louisiana of 1900, amending Act No. 79 of the Session of 1892, and by virtue of certificate of transfer therein signed by the Register of the State Land Office and the State Auditor, which said certificate of transfer is recorded in Book 28, page 329, of the records of Caddo Parish, Louisiana;

And that the State of Louisiana acquired the said property under and by virtue of its sovereignty, upon its admission as a State into the Union, as part of the bed of a navigable body of water, to-wit, Ferry Lake; or if said property was not at the date of such admission part of the bed of Ferry Lake, that the State did acquire the same by act of Congress of March 2nd, 1849, granting to the State of Louisiana all swamp and overflowed lands within its area; the said tract being, if not the bed of a navigable body of water, swamp and overflowed land of the character contemplated by the said swamp land grant.

Defendant denies that title to the said property was in the United States at the date of defendant's said purchase, or that any of said deeds are null and void in so far as they affect the property herein; but defendant specially claims to be the sole and legal owner of the said property, under and by virtue of the said deeds, and that the lands described therein specifically include the property involved in this suit, but which is described in the bill by reference to the said illegal and unauthorized survey.

Defendant denies that it has no right, title or interest in and to said tract of land, but specially avers that it

is the sole and legal owner of the same and shows that acting under its purchase, it entered upon the said tract of land and drilled thereon, and has taken therefrom thirty-seven hundred and one & 16/100 (3,701.16) barrels of oil, which it has sold for its own benefit, at the market prices prevailing in said field at the dates of production of said oil, the total proceeds therefrom being Fifty-one Hundred and Fifty-seven & no/100 ($5,157.00) Dollars.

11 VI.

Defendant admits that it is still in possession of said property as owner, but it is denied that its possession is an unlawful trespass; and defendant shows that it is still the owner of the property with the right to exercise every right of ownership thereon.

VII.

Defendant shows that, as aforesaid, the value of the oil taken from the said property amounts to the sum of Fifty-one Hundred and Fifty-seven ($5,157.00) Dollars, and says that the value of the land involved is entirely speculative and it, therefore, neither affirms nor denies the allegation as to the value in this regard; but defendant specially denies that it acted in bad faith in the premises.

VIII.

And now defendant says that in its purchase of the said property and in its possession under said purchase it acted in good faith under a title from one whom it believed to be the owner and whom it was advised was the owner of the said property; and that all of its acts and conduct thereunder were in absolute good faith, and that the well drilled by it, as aforesaid, was drilled by it

in good faith; and that in the event it should be held that the plaintiff is the owner of the said property that defendant is entitled to be reimbursed the entire cost of drilling, equipping and operating the well before it can be held liable for any oil extracted therefrom. And defendant shows that the cost of drilling, equipping and operating the said well up to the date of this suit amounted to the sum of Ninety-three Hundred and Fifty-three & 63/100 ($9,353.63) Dollars, detailed as follows, to-wit:

Drilling and equipping,	$6,536.13;	
Operating expenses to July 31st, 1917,	2,817.50;	$9,353.63

12 IX.

And in the alternative defendant shows that in the event it should be held that the Board of Commissioners of the Caddo Levee District was not the owner of the said property and that defendant's title, deraigned from the said Board, does not invest it with the full and absolute ownership of the said property, then defendant would show that the plaintiff has no right, title or interest in and to the said property, for the reason that on the 4th day of April, 1843, the United States of America issued to James Shinick a patent to all of fractional Section Twenty-four (24), Township Twenty (20) North, Range Sixteen (16) West, Louisiana, as fully appears from the said patent, which will be produced upon the trial hereof; and that if the property herein involved was not the property of the State of Louisiana by virtue of its sovereignty, or by virtue of the swamp land grant, then that the patent so issued conveyed all of the rights of the United States to said property as part of said fractional Section 24, Township 20 North, Range 16 West. And that having disposed of the

entire title to all of the said land, the United States was without any further interest therein and, particularly without any interest in the land here in controversy; and that the Commissioner of the General Land Office had no right to interfere with the survey under which the said fractional Section 24 has been surveyed and patented and that his action therein was illegal, null and void, and that the title to the said property, if not in this defendant, is in the persons holding under the patent above referred to.

Wherefore, having made full and complete answer to all the allegations of the aforesaid bill of complaint, defendant prays that the said bill be dismissed with all costs in this behalf sustained.

In the alternative, in the event the Court should hold that the plaintiff is the owner of the said property, then defendant prays that it may be adjudged not liable to the plaintiff on account of the oil taken from the said property until the plaintiff shall have repaid and reimbursed defendant the cost of drilling, equipping
13 and operating the well from which the said oil was secured; and that in any event, if this relief be refused, that it be adjudged that the cost of drilling, equipping and operating said well being in excess of the total value of the oil produced therefrom that this defendant is not liable to the plaintiff in any amount.

Defendant further prays for all orders necessary in the premises and for general relief.

D. EDWARD GREER,
THIGPEN & HEROLD,
Solicitors for Defendant.

Indorsed: Answer. F. C. Proctor, D. Edward Greer; Thigpen & Herold. Filed Aug. 15, 1917.

14 (PLAINTIFF'S REPLY TO DEFENDANT'S SET OFF AND COUNTER CLAIM).

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,
Plaintiff,
vs. No. 1158 In Equity.
Gulf Refining Company,
Defendant.

1.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and renewing and reaffirming the allegations and prayer of the original bill filed herein, for reply to the set off and counter claim included in the answer of the Gulf Refining Company, denies all the allegations of the defendant's answer, and particularly paragraph 8 and the prayer of said answer, as well as all other portions thereof, relating to the said set off and counter claim.

2.

Plaintiff further shows that the said defendant is not entitled to any set off or counter claim whatever against plaintiff, because the said defendant entered upon the land described in the bill of complaint herein, drilled a well thereon and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendant was a wilful and knowing trespasser on said land.

3.

Plaintiff further shows, in the alternative, that even if the said defendant is entitled to a set off or counter claim in any amount, which is denied, the sum claimed by the defendant is excessive and should not be allowed.

Wherefore, plaintiff prays that the set off and counter claim asserted by the defendant be denied and disallowed and that plaintiff have relief in the premises, as
15 prayed for in the bill of complaint herein.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed: Plaintiff's reply to Defendant's set-off and Counter-claim. Filed Aug. 18, 1917.

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16 (ORDER APPOINTING SPECIAL MASTER).

United States District Court, Western District of Louisiana.

United States,
vs. No. 1158.
Gulf Refining Company of Louisiana.

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court and economize its time, and for the purpose of expediting the final hearing of said cause, the Court of its own motion appoints Edward H. Randolph, Esq., Special Master herein.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court of elsewhere as may be advisable.

RUFUS E. FOSTER,
Judge.

March 29, 1918.

Filed Mar. 29, 1918.

759046

17 Department of the Interior,
B General Land Office.
R Washington, Jan. 31, 1918.

I hereby certify that the annexed copy of patent is a true and literal exemplification from the record which is in my custody in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

L. Q. C. LAMAR,
(Seal) Recorder of the General Land Office.

17 The United States of America.

Redemption Certificate
No. 1829.

To all to whom these presents shall come, greeting:

Whereas, James Shinick, of Caddo, Louisiana, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Natchitoches whereby it appears that full payment has been made by the said James Shinick according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands", for fractional section twenty-four, in township twenty of range sixteen, in the District of Lands subject to sale at Natchitoches, Louisiana, containing one hundred and fourteen acres and eighty hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said James Shinick.

18 Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress, in such case made and provided, have given and granted, and by these presents do give and grant, unto the said James Shinick and to his heirs, the said tract above described: to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature, thereunto belonging, unto the said James Shinick and to his heirs and assigns forever.

In testimony whereof, I, John Tyler, President of the United States of America, have caused these letters to be

made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the first day of April in the year of our Lord one thousand eight hundred and forty-three and of the Independence of the United States the sixty-seventh.

By the President: JOHN TYLER,
(Seal) By R. TYLER, Sec'y.

I. WILLIAMSON,
Recorder of the General Land Office.

Filed Jan. 21, 1919.

19 No. 1158—U. S. vs. Gulf Refining Co. of La.

(Item No. 2).

(Conveyance from State of Louisiana, through Register of Land Office, to Board of Commissioners of Caddo Levee District).

Description list of swamp and overflowed lands situate in the Parish of Caddo, and granted to "The Board of Commissioners for the Caddo Levee District", by Act No. 74 of the General Assembly of Louisiana, approved July 6, 1892, and Act No. 90, approved July 7, 1894, and transferred to said Board by the Register of the State Land Office of Louisiana and the State Auditor under and by virtue of the provisions of said acts.

T. 19 N. R. 15 W. N. W. District	Sec.	Area	Area
All of	1	640.00	
All of	2	640.00	
All of	3	640.00	
NE ¼ of	4	160.00	
Frac. NW ¼ of	4	99.04	
Frac. SE ¼ of	4	103.00	
Frac. NE¼ of	5	12.92	
Frac. NE ¼ of NE ¼	9	3.82	
E ½ of	10	320.00	
Frac. W. ½ of	10	230.12	
All of	11	640.00	
All of	12	640.00	
N ½ of	13	320.00	
SE ¼ of	13	160.00	
Frac. SW ¼ of	13	147.04	
Frac E ½ of	14	175.68	
Frac. NW ¼ of	14	81.00	
Frac. NE ¼ of	15	72.00	
Frac. NE ¼ of NW ¼ of	15	8.27	
Frac. NE ¼ of	24	141.71	
Frac. N ½ of NW ¼ of	24	34.00	
Frac. SE ¼ of NW ¼ of	24	3.00	5271.60

T. 20 N. R. 16 W., N. W. District.

Frac. E ½ of	1	141.63	
Frac. W ½ of	3	104.20	
E ½ of	4	320.00	
SW ¼ of	4	160.00	
S ½ of NW ¼ of	4	80.00	
NE ¼ of NW ¼ of	4	40.00	
Frac. NW ¼ of NW¼ of	4	38.75	
Frac. E ½ of	5	187.00	approx.

Frac. E ½ of		8	281.00	approx.
All of		9	640.00	
Frac. W ½ of		10	213.12	
Frac. SE ¼ of		10	137.00	
	Frac. S ½ of	11	219.19	
20	Frac. SW ¼ of	12	61.90	
	Frac. W ½ of SW ¼ of SE¼ of	12	7.00	
Frac.		13	485.00	
All of		14	640.00	
All of		15	640.00	
Frac. N E ¼ of		17	98.55	
Frac. SE ¼ of		17	45.00	
Frac. E ½ of		20	109.33	
All of		21	640.00	
All of		22	640.00	
All of		23	640.00	
Frac.		24	525.20	
Frac.		25	610.75	
Frac.		26	557.37	
Frac. NE ¼ of		27	74.93	
Frac. NW ¼ of		27	90.50	
Frac.		28	569.00	
E ½ of		29	320.00	
Frac. E½ of		32	188.44	
Frac. N ½ of		33	16.12	
Frac. N ½ of		36	27.00	9547.98

T. 21 N. R. 7 16 W. N. W. District.

Frac. E ½ of		36	140.16	140.16
Grand Total Estimated Area				14,959.74

I, James M. Smith, Register of the State Land Office of Louisiana, do hereby certify the foregoing to be a true

and correct list of such lands as appear within the limits of Clear Lake in Thps. 20 and 21, N. R. 16 W., Soda Lake in T. 19, N. R. 15 W., and Terry Lake in T. 20, N. R. 16 W., (East of the Texas State Line) commonly known, classed and identified as "Dried up Lake Lands", containing in the aggregate an estimated area of fourteen thousand nine hundred and fifty nine acres and seventy-four hundredths of an acre, (14,959.74) as will more fully appear from the official plats of survey of these townships.

And I further certify that all of the foregoing lands are embraced within the limits of the Caddo Levee District as created by Act No. 74 of the General Assembly of Louisiana, approved July 6, 1892. Act No. 90, approved July 7, 1894, and Act No. 160, approved July 12, 1900.

Witness my official signature and seal of office at the City of Baton Rouge, Louisiana, this sixth day
21 of July, A. D. 1901.

JAS. M. SMITH, Register State Land Office of Louisiana.

We, the undersigned, James M. Smith, Register of the State Land Office of Louisiana, and W. S. Frazer, Auditor of said State, by virtue and in pursuance of the authority granted by Act No. 74 of the General Assembly of Louisiana, approved July 6, 1892. Act No. 90, approved July 7, 1894, and Act No. 160, approved July 12, 1900, and acting under and by virtue of the opinion of the Hon. Walter Guion, Attorney General of Louisiana, dated February 27, 1901, and being requested so to do by "The Board of Levee Commissioners for the Caddo Levee District, for and on behalf and in the name of the State of Louisiana, do, by this instrument of writing, grant and convey to

said Board of Levee Commissioners all and singular the foregoing swamps and overflowed lands described herein, and embraced within the limits of "The Caddo Levee District", to have and to hold the aforesaid lands unto the said Board, its successors and assigns forever.

In testimony whereof, we have hereunto subscribed our respective names officially, and have caused the seals of our respective offices to be affixed at the City of Baton Rouge, Louisiana, this sixth day of July, A. D. 1901, and of the independence of the United States the one hundred and twenty-sixth.

This deed of conveyance is made in duplicate.

JAS. M. SMITH, Register State Land Office of Louisiana.
W. S. FRAZER, Auditor of Louisiana.

(Indorsed):—Filed and Recorded Oct. 10, 1901.
F. A. LEONARD,
Clerk and ExOfficio Recorder.

Recorded in Con. Book 28, page 329.

State of Louisiana,
Parish of Caddo.

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same
22 now appears on file and of record in my office.
Given under my hand and seal of office this 25th day of Janv., 1911.

F. A. LEONARD,
(Seal) Clerk and ExOfficio Recorder.

23 NO. 1158—U. S. vs. Gulf Refining Co. of La.

(Item 3).

Act of Sale from Board of Commissioners of Caddo Levee District to Sam W. Mason, dated February 27, 1909, of a lot of ground described as follows: Beginning at a point 40 chains south of the northeast corner of fractional section 24, township 20, North, Range 16 West, being at the intersection of the traverse line of Ferry Lake with the east line of said section; thence south 52 degrees west, 8 chains, thence south 30 degrees west 10 chains, thence south 49 degrees, west 5 chains; thence south 820 feet, more or less, to a point 15 chains west of the west line of section 19, Township 20, Range 15; thence east 15 chains to intersect the west line of section 19, township 20, range 15 of the east line of section 24, township 20, range 16 at a point 30 chains south of the place of beginning; thence north 30 chains to the place of beginning, containing, by estimation, 32.75 acres, more or less; also lots 2, 4, 5, 9, 11 and 12 in section 19, township 20, range 15, as shown by United States survey, containing, as per said survey, 124.68 acres. All of said lands in Caddo Parish, Louisiana, containing in the aggregate 157.43 acres, more or less, together with other lands.

(Item 4).

Act of sale from Sam W. Mason to B. R. Norvell, dated July 26, 1919, conveying all of the lands described in Item 3, above.

(Item 5).

Act of sale from B. R. Norvell to Gulf Refining Company of Louisiana, dated July 30, 1909, conveying the same lands conveyed by Sam W. Mason to B. R. Norvell, Item 4, next above.

Department of the Interior,

24 DMG—"FS"
"B" General Land Office.
CRGO Washington, D. C.

January 16, 1918.

I hereby certify that the annexed extract copy of Louisiana tract book, so far as it shows section 24, T. 20 N., R. 16 W., Louisiana Meridian, is a true and literal exemplification from the tract book on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

(Seal) D. K. PARROTT,
Acting Assistant Commissioner of the General Land Office.

25 Description of Tract.

(Offered at Sale on the 27th Jany., 1840).

Township No. 20 N., Range No. 16 W., District of Natchitoches, La.

Tp. withdrawn from all disposal by Secy., Dec. 15, 1908. See "A" to R. & R. Natch., Dec. 15, 1908.

Resurvey (or Restoration survey) Plat approved July 24, 1916, (no areas shown, original plat governs) Suppl. Plats (Sheets 1 and 2) of part of Tp. approved March 28, 1917, received in local office, Baton Rouge, April 14, 1917.

Petroleum Reserve No. 4, Ex. Order July 2, 1910.

Letter "X" July 16, 1910, 54239. 745008.

Part of Section—Section—Township—Range—Contents, Acres, 100ths—Rate per Acre, Dollars, cents—Purchase Money, Dollars, Cents—Name of the Purchaser—Date of Sale—Number of Receipt and Certificate of Purchase—To Whom Patented— Date of Patent—Where Recorded, Volume, Page.

Prs. 38—Frac. Sect. 24; 20; 16; 114.80; 1.25; 143.50; James Shinick; 25th Jany., 1840; 1829; 1829.
S pt of N pr. of fr. 4300.
Lot 1—11.49.
S pt. of fr. Sec. 38.50.

Filed Jan. 21, 1919.

26 Gulf Refining Company of Louisiana.

Statement Showing Cost of Drilling and Equipping and Operating and Total Production and Value of Levee Board Fee No. 10 Caddo Parish, Louisiana to December 31st, 1917.

1916	Barrels	Price	Amount
August	302.00	Various	281.24
September	459.06	1.00	459.06
October	405.00	1.00	405.00
November	420.10	1.00	420.10
December	336.00	Various	381.60
	1,922.16		1,947.00

1917

January	348.00	Various	553.20
February	216.00	1.70	367.20
March	261.00	Various	477.00
April	250.00	1.90	475.00
May	214.00	1.90	406.60
June	240.00	1.90	456.00
July	250.00	1.90	475.00
August	150.00	Various	287.40
September	180.00	2.00	360.00
October	186.00	2.00	372.00
November	40.00	2.00	80.00
December	145.00	2.00	290.00
	2,480.00		4,599.40
Grand Total	4,402.16		6,546.40
Plus Pipage or 4402.16 Bbls. at 10c. per Bbl.			440.22
			6,986.62

Commenced drilling July 16, 1916. Completed August 16, 1916.

Expenditures.

Drilling and Equipping well No. 10	6,536.13	
Operating Expense to December 31, 1917	3,654.87	
Total outlay		10,191.00

Oil Production (Gross).

4402.16 Bbls. at various prices plus pipage	6,986.62	6,986.62
Balance to pay out December 31st, 1917		3,204.38

1158. Deft. Gulf Ref. Co. of La. No. 1.
5 Mar 21-1918-5.

Filed Jan. 21, 1919.

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27 (DEFENDANT'S EXCEPTION TO MASTER'S REPORT).

In the District Court of the United States, for the Western District of Louisiana.

United States of America, Plaintiff,
vs. No. 1158, In Equity.
Gulf Refining Company of La., Defendant.

Now comes the Gulf Refining Company of Louisiana, defendant herein, and excepts to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That the Master has in his said report stated and certified that the land in controversy is the property of the United States as unsurveyed lands; whereas he should have certified and reported that the property in controversy is an integral part of fractional Section 24, Township 20 North, Range 16 West, a tract of surveyed land long since patented by the United States.

2.

That the Master in said report stated and certified that the defendants,

"while conceding that this case falls in the same category as that of the Jeems Bayou Hunting & Fishing Club, that the case should be differentiated from that case because the area involved in this case is comparatively very small and that the maxim de minimis lex non surat should apply."

whereas in truth and in fact the defendant made no such admission and the Master should not have so reported.

3.

That the Master in said report stated and certified that

"They contend that in these particular cases the lines run by Warren are substantially meander lines, admitting that, as contended for by plaintiff, at some points in skirting the shore of Ferry Lake, Warren did abruptly (and technically speaking wrongfully) quit the shore line almost at right angles and deliberately left out, between his courses and the real sinuosity of the lake shore, high timbered lands in place, but that he also embraced within his meander as land, bits of water almost equalling the land left out, which resulted in the Govern-
28 ment losing nothing, because in patenting the particular area the Government got paid for as many acres as if Warren had carefully followed the contour and sinuosities of the lake; therefore, if Warren did wrongfully leave out between his meander and the actual shore the high timber lands, it is a case of damnum absque injuria so far as the Government is concerned."

Whereas, defendant made no such admission or contention and the Master should have reported and certified that defendant contends and insisted before him that Warren's line was in fact and in law a meander line and

not a line of boundary; the arguments of the defendant relative to water areas included in the acreage shown on Warren's survey being merely arguendo.

4.

The Master reported and certified that the line run by Warren relative to the property in controversy was not in truth a meander line and was not run according to the principles governing the running of meander lines; whereas, he should have reported and certified that said line was in truth and in fact a meander line, and not a line of boundary.

5.

That the Master in said report erroneously stated and certified that Warren's survey of Township 20 North, Range 16 West, was not a proper survey of the township; whereas, he should have reported that under all the circumstances under which the survey was made and the instruments then in use, the survey was not only a reasonably correct one, but was made with a remarkable degree of accuracy.

6.

That the Master in said report, erroneously stated that defendant's only claim is,

"that taking the whole of the northern shore of Ferry Lake, including Sections 3, 10, 11, 12, 13 and 24, surveyed by Warren, the area of land lying between the Warren meander line and Kidder's establishment of the 173.09 contour line, was 69.56 acres, and that Warren's survey included within it about 44 acres of land which in fact

was water; so that the Government as respects this part of the township would only lose the difference, or 25.56 acres, which defendants virtually admit still technically remain in the Government as left out of the Warren survey";

whereas, the facts are, and the Master should have certified and reported, that defendant never made any admission that the land "still technically remains in
29 the Government as left out of the Warren survey"; but, on the contrary, that it contended and insisted that the land in controversy was embraced within the Warren survey as part of fractional Section 24, Township 20 North, Range 16 West, a tract of land bounded by the high water line of Ferry Lake and long since patented by the United States; the contention of the defendant relative to water surface being made arguendo.

7.

That the Master reported and so certified that

"Defendants cannot now eke out any title to any land, admittedly not within the boundaries of the property patented, on the ground that their ancestor in title did not get quite the acreage and, therefore, the present defendants are entitled to hold entirely new areas belonging to the Government as an offset";

whereas the facts are, and the Master should have so reported that defendant never made any such contention, but has insisted and still insists, that the tract of land in controversy is within the boundaries of the property patented; defendant's counsel making the argument as to the water surface referred to only by way of argument.

8.

That the Master has in said report stated and certified that

"Baldly stated, the proposition of defendants is in effect that if the Government has made a gain by selling water for land, it would be equitable to permit the occupant of a piece of unsurveyed land in this township, which land is about equal to the water area previously sold, to compensate and defeat the Government's claim for said unsurveyed land by replying to the suit 'you have already been paid for all the land actually in this township and I should keep this piece and you will really suffer no loss";

whereas defendant never made such contention and the Master should not have so reported and certified, but should have stated that the defendant insisted that the land in controversy was not unsurveyed land but an integral part of fractional section 24, township 20 north, range 16 west, long since patented by the United States; the arguments advanced by counsel for the defendant with reference to water surface being by way of illustration and argument only.

30 9.

That the Master has in said report stated and certified that defendants

"contend the area is so little and when it was left out by Warren so utterly worthless that the Government's claims should be dismissed on the ground of de minimis lex non curat";

whereas the Master should have reported and certified that the defendant's contention and insistence was that Warren's purported meander line was in truth and in fact and in law a meander line, and not a line of boundary, and that the tract in controversy was not left out of the Warren survey, but formed an integral part of the subdivision known as fractional Section 24, Township 20 North, Range 16 West, long since patented by the United States; the reference by defendant as to the small quantity of land involved being part of its argument only, as going to disprove the plaintiff's contention.

10.

That the Master reported and certified as a fact,

"that at the points complained of, these lines of Warren were not run according to the above principles, but that he arbitrarily in such instances left the shore at right angles thereto, blazed his way thro high lands heavily timbered, and then returning to the shore line some distance apart from his departure;"

whereas the Master should have certified and reported that the lines run by Warren as meander lines were in truth and in fact meander lines, according to the principles of surveying and the laws of the United States.

11.

That the Master has in said report stated and certified that the Warren meander line was a line of boundary, and not a meander line; whereas he should have reported and certified that the lake front boundary of the subdivision described as "fractional Section 24, Township

20 North, Range 16 West", long since patented by the United States, is the ordinary high water mark of Ferry Lake, and not the Warren meander line.

Wherefore, defendant prays that these exceptions be sustained and that judgment be rendered in its
31 favor accordingly.

THIGPEN & HEROLD,
Solicitors for Defendant.

Indorsed:—Exception of the Gulf Refining Company of Louisiana to the Report of the Special Master. Filed Jan. 30, 1919.

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32 (DECREE).

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,

vs. No. 1158 In Equity.

Gulf Refining Company of Louisiana.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

I. That the report filed herein January 11, 1919, by E. H. Randolph, Special Master in Chancery, be and the same is hereby approved and confirmed; and, accordingly:

II. That the land described in the bill of complaint, namely, Lot One (1) of Section Twenty-four (24), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing eleven and forty-nine hundredths (11.49) acres, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and ex-officio Surveyor General for the State of Louisiana, be and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

III. That the deeds of sale made February 27, 1909, by the Board of Commissioners of the Caddo Levee District to Sam W. Mason, by Sam W. Mason to B. R. Norvell, and by B. R. Norvell to the Gulf Refining Company of Louisiana, July 30, 1909, all as per acts of record in Book 57, page 11, Book 58, page 658, and Book 57, page 175, respectively, of the Conveyance records of the Parish of Caddo, State of Louisiana, be and the same are hereby declared null, void and held for naught, insofar as they may include directly or indirectly
33 the above described property, and, to that extent, the said deeds are annulled and shall be cancelled.

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendant, and that the possession of the said land shall be restored to plaintiff.

V. That the said defendant, namely, Gulf Refining Company of Louisiana, shall be, and it is hereby, finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas or minerals, on or under the same and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and accordingly, that a writ of injunction issue restraining, enjoining and prohibiting the said defendant from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the said defendant be and it is hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendant since January 1, 1918, be reserved.

VII. That the said defendant be, and it is hereby, condemned and ordered to pay all the costs of this suit.

VIII. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreveport Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells,
34 improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the

production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendant is hereby ordered, commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree, furnish bond, with good and solvent surety, to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of Five Hundred ($500.00) Dollars, which said bond may hereafter be increased, or reduced, as the Court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil or other property that may come into his hands as receiver. The said receiver shall surrender possession of said land and of all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said receiver, to obtain such accounting from the said receiver as the Court may order, to require the delivery to the United States of such land and property, and the accounting and payment to be made by the receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do and perform such other acts, in relation to the administration of said receiver, and the

termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

Thus done, read and signed in open Court this 4th day of August, 1919.

RUFUS E. FOSTER,
United States Judge.

Indorsed:—Decree. Filed August 12, 1919.
B.

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36 (PLAINTIFF'S PETITION, ORDER OF APPEAL AND ASSIGNMENT ERRORS).

In the District Court of the United States for the Western District of Louisiana.

United States of America,

vs. No. 1158 In Equity.

Gulf Refining Company of Louisiana.

To the Honorable, the Judge of the District Court of the United States, for the Western District of Louisiana.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, and, with respect, represents:

That on August 4, 1919, this Court entered a final decree in said cause, and that in said decree there was, in part, error greatly to the prejudice and injury of plaintiff, as will more fully appear by the assignment of er-

rors filed herewith. Plaintiff desires to take an appeal from said decree to the United States Circuit Court of Appeals of the Fifth Circuit.

Wherefore, it is prayed that an appeal may be allowed to plaintiff in this cause from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, and that proper orders for the allowance of such appeal may be made by this Court.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

37 ORDER.

The foregoing petition for an appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed an appeal herein, from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 1st day of January, 1920.

RUFUS E. FOSTER,
United States Judge.

38 ASSIGNMENT OF ERRORS ON PLAINTIFF'S APPEAL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,
vs. No. 1158 In Equity.
Gulf Refining Company of Louisiana.

Now comes plaintiff, the United States of America, and in connection with its petition for an appeal herein, presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to-wit:

I.

The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counterclaim of the Gulf Refining Company of Louisiana, for costs and expenses incurred in producing said oil, and in not entering a decree in favor of plaintiff for the total value of said oil.

II.

The Court erred in allowing to said defendant, as an offset or counterclaim, the cost of production of said oil and in not entering decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had been withdrawn from any appropriation whatever by orders of the President of the United States, dated, respectively, December 15, 1908, and July 2, 1910, which orders were

issued for the purpose of conserving the public interest and in aid of pending and proposed legislation. The said well was drilled in violation of each of said orders and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said well.

39

III.

The Court erred in applying herein the rules relating to a case of innocent trespass, for the reason that there was no evidence to show that the defendants acted in good faith in extracting and removing the oil in question.

IV.

The Court further erred, in any event, in finding and holding that said defendants were entitled to deduct from the value of the oil extracted from the land in suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit or counterclaim.

Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim for the cost of drilling, equipping and operating the well in suit, and that a decree be rendered and entered in favor of plaintiff herein for the full value of the oil extracted and removed from said land, as shown by the report of the Master in Chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to enter a decree in favor of plaintiff

for the full value of said oil, without offset or deduction of any kind.

Plaintiff further prays that, in any event, the costs of drilling and equipping said well be deducted and excluded from any allowance that may be made to defendants as an offset or counterclaim herein.

Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

40 Indorsed:—Plaintiff's Petition for Appeal, Order Allowing same, and Assignment of Errors. Filed Jan. 3, 1920.

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41 (DEFENDANT'S PETITION AND ORDER FOR APPEAL).

In the District Court of the United States for the Western District of Louisiana.

United States of America, Plaintiff,
vs. No. 1158 In Equity.
Gulf Refining Co. of Louisiana, Defendant.

To the Honorable Judge of the District Court of the United States for the Western District of Louisiana, sitting within and for the Shreveport division:

The above named defendant, the Gulf Refining Company of Louisiana, feeling itself aggrieved by the decree made and entered in this cause on the 12th day of August, 1919, does hereby appeal from said decree to the Circuit

Court of Appeals for the Fifth Circuit for the reasons specifed in the assignment of errors, which is filed herewith, and now prays that its appeal be allowed, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers on which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans.

And your petitioner further prays that the proper order touching the security to be required of it to perfect said appeal be made.

THIGPEN & HEROLD,
Solicitors for Defendant, Gulf
Refining Company of Louisiana.

ORDER.

Let the foregoing petition be granted and the appeal allowed upon the defendant giving bond as required by law in the sum of Two Hundred and fifty Dollars.

RUFUS E. FOSTER,
United States District Judge.

Jan. 10/1920.

Indorsed:—Motion and Order for Appeal. Filed Jan. 12, 1920.

42 (DEFENDANT'S ASSIGNMENT OF ERRORS).

In the District Court of the United States, for the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1158 In Equity.

Gulf Refining Co. of Louisiana, Defendant.

And now, on this the 10th day of January, 1920, comes the defendant, Gulf Refining Company of Louisiana, by its solicitors, Thigpen & Herold, and says that the decree in the above cause on the 12th day of August, 1919, is erroneous and unjust to the defendant; and for specification of errors, show:

First.

The Court erred in holding that the property in controversy is public lands of the United States.

Second.

The Court erred in holding that the premises in controversy is not a part of fractional Section twenty-four (24), Township twenty (20) north, Range sixteen (16) West, Louisiana Meridian, patented by the United States to James Shinick on the 4th day of April, 1843.

Third.

The Court erred in holding that the meander line run by A. W. Warren, United States Deputy Surveyor, is a line of boundary.

Fourth.

The Court erred in holding that fractional section twenty-four (24) Township Twenty (20) North, Range Sixteen (16) West, patented by the United States to James Shinick as aforesaid, does not extend to Ferry Lake as shown by the approved official plat of survey by A. W. Warren, United States Deputy Surveyor.

43

Fifth.

The Court erred in holding that Warren's meander of Ferry Lake in fractional section twenty-four (24), township twenty (20) north, range sixteen (16) west, was not run to denote the boundary of the property as being the natural monument of Ferry Lake, but is in itself the boundary.

Sixth.

The Court erred in holding that there were any facts or circumstances shown in the evidence, disclosing any intention to limit the property shown on official plat of survey of fractional section twenty-four (24), Township twenty (20) North, Range 16 (16) West, to actual traverse lines or to cause such result to follow the survey.

Seventh.

Wherefore, defendant prays that the said decree be reversed and the District Court directed to dismiss the case; and for general relief.

THIGPEN & HEROLD,
Solicitor for Defendant.

Indorsed:—Assignment of Errors. Filed Jan. 10, 1920. B.

44 APPEAL BOND.

In the District Court of the United States, for the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1158 In Equity.

Gulf Refining Company of La., Defendant.

Know all men by these presents:

That we, the Gulf Refining Company of Louisiana, as principal and the American Surety Company, as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above cause, in the full sum of Two Hundred Fifty Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at Shreveport, Louisiana, on this the 8th day of January, 1920.

The condition of the above obligation is such that,

Whereas, on the 12th day of August, 1919, in the District Court of the United States for the Western District of Louisiana, in a suit pending in that Court wherein the United States of America was plaintiff and the Gulf Refining Company of Louisiana was defendant, numbered on the Equity Docket 1158, a decree was rendered and signed against the said Gulf Refining Company of Louisiana, and the said Gulf Refining Company of Louisiana having obtained an appeal to the United States Circuit Court of Appeals for the Fifth Circuit;

Now, if the said Gulf Refining Company of Louisiana shall prosecute such appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; otherwise to remain in full force and effect.

GULF REFINING COMPANY OF LOUISIANA,
By S. L. HEROLD, Atty.
AMERICAN SURETY COMPANY OF NEW YORK,
By R. L. GAFFNEY, Atty. in fact,
(Seal) By J. C. TRICHEL.

Approved:

RUFUS E. FOSTER,
U. S. Dist. Judge.

Indorsed:—Appeal Bond. Filed Jan. 12, 1920. B.

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45 STIPULATION OF COUNSEL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,

vs. No. 1158.

Gulf Refining Company of Louisiana.

Counsel for Plaintiff and Defendant do hereby enter into the following stipulation relative to the contents of the record on appeal in the above numbered and entitled cause;

Whereas, this cause, together with suits numbered 1162, 1163, 1164, were consolidated in the District Court for trial with the case entitled United States vs. C. W. Lane, et al., No. 1153, on the docket of said Court, which suit has likewise been appealed to the United States Circuit Court of Appeals for the Fifth Circuit; and,

Whereas, in order to reduce the size of the several transcripts counsel have agreed that the record of appeal in the said cause, No. 1153, United States vs C. W. Lane, et al., shall contain and include certain testimony, exhibits, the Master's report, the opinion of the Court, certain general stipulations of counsel and other matters applicable to all of the cases so consolidated, including maps and exhibits sent up in the original; and,

Whereas, counsel have agreed to incorporate in the transcript in this cause only the pleadings, exhibits and other things specially applicable to this suit; now, therefore:

It is stipulated that the transcript of appeal in the said cause, entitled United States v. C. W. Lane, et al., No. 1153, on the docket of the United States District Court for the Western District of Louisiana, shall be a part of the record on appeal in this suit, and shall be applicable thereto.

46 It is stipulated that the Clerk shall prepare the transcript of appeal in this cause, and shall copy into and incorporate therein the following, to-wit:

1. Bill of Complaint.

2. Answer of Defendant.

3. Plaintiff's reply to set-off and counter-claim.

4. Order appointing E. H. Randolph, Special Master in Chancery.

5. Patent from the United States to James Shinnick, covering fractional section 24, township 20 North, Range 16 West.

6. Conveyance from the State of Louisiana, through Register of the State Land Office, to Board of Commissioners of the Caddo Levee District.

7. Act of sale from Board of Commissioners of Caddo Levee District to Sam W. Mason.

8. Act of sale from Sam W. Mason to B. R. Norvell.

9. Act of sale from B. R. Norvell to Gulf Refining Company of Louisiana.

10. Extract from Tract Book, relating to Section 24, Township 20 North, Range 16 West, marked plaintiff's J.

11. Statement identified by the witness, James W. Neal, marked Gulf Refining Company of Louisiana, defendant's Exhibit 1.

12. Defendant's exceptions to Master's report.

13. Plaintiff's exceptions to Master's report.

14. Final decree.

15. Plaintiff's petition for appeal, order of appeal and assignment of errors.

16. Defendant's petition for appeal, order thereon, assignment of errors and appeal bond.

17. This stipulation.

Thus done and signed this 18th day of May, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.

THIGPEN & HEROLD,
Attorneys for Defendant.

Filed May 19, 1920.

53 *Certificate.*

I, W. B. Lee, clerk of the District Court of the United States for the Western District of Louisiana, fifth circuit, do hereby certify that the foregoing forty-six pages contain and form a full, true, correct, and complete transcript of the record, assignment of errors, and all proceedings had in a cause wherein the United States of America is complainant and the Gulf Refining Company of Louisiana is defendant, No. 1158 in equity on the docket of said court, as fully as the same remains on file and of record in my office at Shreveport, Louisiana—this transcript having been prepared in accordance with stipulation of counsel, a copy of which accompanies this transcript.

Witness my hand officially and the seal of said court, at the city of Shreveport, Louisiana, on the 21 day of May, A. D. 1920.

[SEAL.]

W. B. LEE,
Clerk, United States District Court,
Western District of Louisiana.

Citations omitted from the printed record, being filed in the original.

* * * * * * *

67024—21——2

54 That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and submission.

Extract from the minutes of February 24th, 1921.

THE GULF REFINING COMPANY OF LOUISIANA
versus
THE UNITED STATES OF AMERICA, ETC. } No. 3537.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., special assistant to the Attorney General, for appellee and cross-appellant, and S. L. Herold, Esq., for appellant and cross-appellee, was submitted to the court.

Opinion of the court.

Filed June 22nd, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3536.

C. W. LANE ET AL., APPELLANTS AND CROSS-APPELLEES,
versus
THE UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT.

No. 3537.

GULF REFINING COMPANY OF LOUISIANA, APPELLANT AN CROSS-APPELLEE,
versus
THE UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT.

55 No. 3538.

SOUTHWESTERN GAS & ELECTRIC COMPANY, ET AL., APPELLANTS AND CROSS-APPELLEES,
versus
THE UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT.

No. 3539.

GULF REFINING COMPANY OF LOUISIANA, ET AL., APPELLANTS AND CROSS-APPELLEES,
versus
THE UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT.

No. 3540.

THE UNITED STATES OF AMERICA, APPELLANT,
versus
MRS. JESSIE M. LA ROBADIERRE, ET AL., APPELLEES.

Appeals and Cross-appeals from the District Court of the United States for the Western District of Louisiana.

S. L. Herold, J. A. Thigpen (D. Edward Greer, Hampden Story and J. D. Wilkinson on the brief), for appellants and cross-appellees in Nos. 3536, 3537, 3538 and 3539.

Robert A. Hunter, special assistant to the Attorney General, for appellee and cross-appellant in Nos. 3536, 3537, 3538 and 3539.

Robert A. Hunter, special assistant to the Attorney General, for appellant in No. 3540.

S. L. Herold, J. A. Thigpen (D. Edward Greer, Hampden Story and J. D. Wilkinson on the brief), for appellant in No. 3540.

56 Before Walker, Bryan and King, circuit judges.

BRYAN, *Circuit Judge:*

These suits were brought by the United States to recover several small tracts of land in Caddo Parish, Louisiana, and also to compel an accounting for oil and gas produced therefrom by appellants. The lands lie in separate tracts along the edge of Ferry Lake in township 20, north of range 16 west, Louisiana meridian. This township was first surveyed in 1839 by United States Deputy Surveyor A. W. Warren, and the plat filed by him represents several fractional sections bordering on the lake. According to that plat the lands in litigation were included within these fractional sections.

Because of the discovery of oil thereon the township was resurveyed in 1917, under the direction of Arthur D. Kidder, supervisor of surveys for the General Land Office. By this later survey the lands in litigation are represented as lying between the meander lines of Warren's survey and Ferry Lake, and are designated as new subdivisions omitted from Warren's survey.

The fractional sections surrounding the lake had been sold and patented from time to time, and acquired by appellants long before the resurvey of 1917 was made.

There are no disputed questions of fact. It was admitted by stipulation that Kidder's survey was accurately made, and that Kidder correctly reestablished and reproduced Warren's survey; that the contour line of Ferry Lake, at mean high water, in 1812, when Louisiana was admitted into the Union, in 1839, when Warren made his survey, and in 1917, when Kidder made his survey, was 173.09 feet above mean Gulf level; that all the tracts of land in litigation lie above that elevation, and are upland in character; and that Ferry Lake is, and was in 1812 and 1839, a navigable

57 body of water. It was also shown beyond question that Warren in his survey ran the section lines to, and accurately es-

tablished corners and set meander posts on, the contour line of Ferry Lake.

In running out his meander lines Warren did not always follow the exact contour of the lake, but he approximated it very closely in so far as the lands involved in these suits are concerned. In some instances irregular areas of land which jut out into the water are outside the meander lines, and in other instances, where the land sharply recedes, water is inside the meander lines. Very little difference in acreage between the land so excluded and the water so included is shown by the testimony. In at least one of the cases the area of water included exceeds the area of land excluded.

In the first mentioned of these suits Warren's survey represents the land in that fractional quarter-quarter section as containing 26.80 acres; Kidder's survey adds as a new subdivision 5.67 acres. In the second suit Warren's survey represents 114.80 acres; Kidder's survey adds 11.49 acres. In the third suit Warren's survey represents 155 acres; Kidder's survey adds 27.87 acres. In the fourth suit Warren's survey represents 23 acres; Kidder's survey adds 12.72 acres. In the fifth and last suit Warren's survey represents 83.75 acres; Kidder's survey adds 22.71 acres. It is for these additional acres the Government sues.

The cases were consolidated and the court entered decrees sustaining the right of the Government to recover the lands, and also holding appellants liable to account for various amounts realized from the sale of oil and gas, but allowing credit for the costs of production. The Government by cross-appeal in the first, second, third, and fourth suits contends that appellants should not be
58 allowed to deduct these expenses, but should be held liable as wilful trespassers. In the fifth suit, that of United States v. LaRobadierre and the Gulf Refining Co., No. 3540, the original defendants have not appealed, but the Government by direct appeal assigns as error the deduction of expenses of operation and the failure to hold the Gulf Refining Co. liable in solido with the other defendant.

It is the contention of the United States that the lands in litigation, lying between the meander lines of Warren's survey and Ferry Lake, are public lands which were never surveyed until 1917. Appellants on the other hand assert title as owners of the fractional sections.

Section 2396 of the Revised Statutes deals with the boundaries and contents of public lands, and provides that boundary lines shall be ascertained by running straight lines from established corners to opposite corresponding corners, except that, in those portions of a fractional township where corresponding corners can not be fixed, the boundary lines shall be ascertained by running from established corners "to the watercourse, Indian boundary line, or other external boundary of such fractional township." There is no other provision of law for the running of meander lines along a water-course, but they are usually run by surveyors for the purpose of computing

acreage. It is proper that they should show the sinuosities of the banks of the watercourse; for the watercourse, and not the meander line, is the true boundary. St. Paul & P. Railroad Co. v. Schurmeir, 7 Wall., 272; Hardin v. Jordan, 140 U. S., 371; Mitchell v. Smale, 140 U. S., 406; Producers Oil Co. v. Hanzen, 238, U. S., 325.

It was Warren's duty to bound the fractional sections on the lake, and it is apparent from his survey and field notes that it was his intention to do so. The survey is not invalidated by the failure
59 to include within the meander lines small, irregular areas of land. In Mitchell v. Smale, supra, the survey called for 4.53 acres, but it was held that title to 25 additional acres also passed by the patent. In that case the Supreme Court said:

"The difficulty of following the edge or margin of such projections and all the various sinuosities of the water line is the very occasion and cause of running the meander line, which by its exclusions and inclusions of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream. The official plat made from such survey does not show the meander line, but shows the general form of the lake deduced therefrom, and the surrounding fractional lots adjoining and bordering on the same. The patents when issued refer to this plat for identification of the lots conveyed, and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water, regularly follow."

Meander lines, and not watercourses, are held to be boundaries, where there is no body of water within a reasonable distance therefrom, as in Horne v. Smith, 159 U. S., 40; Producers Oil Co. v. Hanzen, supra; or where there is no body of water at all, as in French-Glenn Live Stock Co. v. Springer, 185 U. S., 47; Gauthier v. Morrison, 232 U. S., 452; Chapman & Dewey Lumber Co. v. St. Francis Levee District, 232 U. S., 186; and Lee Wilson & Co. v. United
60 States, 245 U. S., 24; or where there is gross fraud, as in Security Land & Exploration Co. v. Burns, 193 U. S., 167. These cases are relied upon by the Government, but in our opinion they are inapplicable to the facts under consideration. In none of the cases cited on the Government's briefs is the rule stated in Mitchell v. Smale overruled or even modified; but, on the contrary, in several of them that case is cited with approval. Here the watercourse was in existence and was actually meandered. There is no suspicion or suggestion that Warren's survey of the lands in litigation was fraudulent. That part of his survey which is in question in these cases was made with a fair degree of accuracy, and for the purposes of computing the acreage and of showing the sinuosities of Ferry Lake as a boundary. It is not impeached by the fact that a

subsequent survey, made with great minuteness because of the discovery of oil, disclosed comparatively slight variations from the established boundary.

There being no appeal by the original defendants in United States vs. LaRobadierre et al., No. 3540, the decree in that case is affirmed. In the other cases the decrees are reversed on the original appeals, with directions to dismiss the bills of complaint; and the cross-appeals are dismissed.

61 *Judgment.*

Extract from the minutes of June 22nd, 1921.

THE GULF REFINING COMPANY OF LOUISIANA,
versus
THE UNITED STATES OF AMERICA, ETC. } No. 3537.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said district court in this cause be, and the same is hereby, reversed on the original appeal, with directions to dismiss the bill of complaint; and that the cross-appeal sued out herein be, and the same is hereby, dismissed.

62 *Petition for appeal and order allowing same.*

Filed August 20, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

GULF REFINING COMPANY OF LOUISIANA,
appellant and cross appellee,
versus
UNITED STATES OF AMERICA, APPELLEE AND
cross appellant. } No. 3537.

To the honorable, the judges of the United States Circuit Court of Appeals in and for the Fifth Circuit:

Now into this honorable court comes the United States of America, appellee and cross-appellant, and says that on June 22, 1921, this court entered a decree herein in favor of appellant and cross appellee and against the United States of America, in which decree there was error greatly to the prejudice and injury of appellee and cross appellant, as will more fully appear by the assignment of errors, which is attached hereto and filed herewith.

Wherefore, the United States of America prays that an appeal may be allowed in said cause from this court to the Supreme Court of

the United States and that proper orders for the allowance of such an appeal be made by this court.

(Signed) ROBERT A. HUNTER,
Special Assistant to The Attorney General.

ORDER.

The foregoing petition for an appeal in the above numbered and entitled cause from the United States Circuit Court of Appeals of the Fifth Circuit to the Supreme Court of the United States
63 being considered, and the assignment of errors being attached thereto and filed therewith, it is ordered:

That an appeal be granted and allowed in the above numbered and entitled cause to the United States of America as prayed for from the United States Circuit Court of Appeals of the Fifth Circuit to the Supreme Court of the United States.

Thus done and signed this 15th day of August, 1921.

(Signed) R. W. WALKER,
Judge, United States Circuit Court of Appeals, Fifth Circuit.

Assignment of errors.

Filed August 20th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

GULF REFINING COMPANY OF LOUISIANA, Appellant and cross-appellee, *versus* UNITED STATES OF AMERICA, APPELLEE AND cross-appellant.	No. 3537.

Now comes the United States of America, appellee and cross-appellant in the above numbered and entitled cause, and in connection with the petition for an appeal herein presents this assignment of errors and says that the opinion and decree entered in this cause by the United States Circuit Court of Appeals of the Fifth Circuit on June 22, 1921, is erroneous in the following particulars, to wit:

1.

The court erred in holding that according to the plat of survey made by A. W. Warren, United States deputy surveyor,
64 the lands in litigation were included within the fractional sections represented by said plat as bordering upon Ferry Lake, whereas the court should have held that the tracts involved in said consolidated suits were not included within said fractional sections as delineated upon said plat but were represented thereon only as a part of Ferry Lake and not as a part of any fractional section shown on said plat.

2.

The court erred in holding that said survey of A. W. Warren was made with a fair degree of accuracy for the purpose of computing the acreage and the sinuosities of the lake as a boundary; whereas the court should have held that there was manifest error in said survey or a material variation between the lines thereof and Ferry Lake; that said survey did not follow the sinuosities of the lake shore, or approximate its contour, or afford a reliable means of ascertaining the quantity of land in said fractional section.

3.

The court erred in holding that the said A. W. Warren intended to make the said lake the boundary of the land in suit, whereas the court should have held that the record of said survey does not show that the lines thereof were run with the meander or along the margin of said lake, and that, as actually made upon the ground, the lines of said survey were not run with the meander or along the margin of said lake.

4.

The court erred in not holding that said tract was, at the time of and since said survey, high land in place, covered with native
65 forest trees and vegetation characteristic of hill land, and was of the same character, geological formation, and quality as the lands included by said Warren in his survey.

5.

The court erred in not holding that, inclusive of the land in suit, the said A. W. Warren omitted from his survey of the township 987.77 acres of high land in place between the so-called meander line and the mean high-water elevation of Ferry Lake as it existed when the State of Louisiana was admitted into the Union and when said survey was made, and which mean high water elevation was known to said surveyor.

6.

The court erred in falling to hold that the tract in controversy was not included in said survey, either in fact or in law, and was not described or embraced in the patent relied upon by defendants.

7.

The court erred in holding that there were no disputed issues of fact and in overruling the findings of fact made by the master in chancery herein and approved by the district judge, incuding the finding that the land in suit was left unsurveyed by the said A. W. Warren and belonged to the public domain of the United States.

8.

The court erred in reversing the decree of the District Court in so far as same was favorable to the United States and in remanding said cause to the District Court with directions to dismiss the bill of complaint.

9.

The court erred in dismissing the cross-appeal and in not reversing the decree of the District Court in so far as it allowed the defendants to offset the cost of drilling the wells against the value of the oil extracted from the land in suit, and in not remanding said cause with directions for the entry of a decree in favor of plaintiff for the full value of the oil, less only the expenses incurred by defendants in operating the wells.

Wherefore, the United States of America, appellee and cross-appellant, prays that the opinion and decree of the United States Circuit Court of Appeals for the Fifth Circuit be reversed; that the decree of the District Court be affirmed in so far as it is favorable to the United States of America; that the said cause be remanded with directions for the entry of a decree in favor of the United States of America for the full value of the oil taken by defendants from said land, less only the cost of operating the wells, and excluding and disallowing as an offset or credit against the value of said oil the sums expended or costs incurred by defendants in drilling said wells, to the end that the United States may recover the value of said oil free of all costs incurred in discovering or reaching the same; and for general relief.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Stipulation as to transcript and original exhibits.

Filed August 20th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

C. W. LANE ET AL., APPELLANTS AND CROSS-appellees,
versus
UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT. } No. 3536.

GULF REFINING COMPANY OF LOUISIANA, APPELLANT AND cross-appellee,
versus
UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT. } No. 3537.

SOUTHWESTERN GAS & ELECTRIC COMPANY ET AL., appellants and cross-appellees,
versus
UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT. } No. 3538.

GULF REFINING COMPANY OF LOUISIANA ET AL., appellants and cross-appellees,
versus
UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT. } No. 3539.

With regard to the appeals to be taken in the above numbered and entitled causes by the United States to the Supreme Court of the United States, it is stipulated by counsel for all parties as follows, to-wit:

1. That the transcripts of appeal shall be made up of the printed records filed in the United States Circuit Court of Appeals with the addition thereto of the proceedings had in said Court of
68 Appeals, and all stipulations of counsel contained in said printed records shall be applicable to these appeals.

2. That all exhibits transmitted to the Supreme Court of the United States in the original in connection with the appeal in case No. 3522 entitled "Jeems Bayou Fishing & Hunting Club et al. v. United States" (No. 407 on the docket of the Supreme Court of the United States), and which were offered in evidence and constitute part of the record in these suits, shall be deemed and considered as a part of the record on appeal in the above suits; said exhibits being as follows: Plat of survey made by A. W. Warren, deputy surveyor, approved August 31, 1839; field notes of Warren survey; resurvey plat of township 20 north, range 16 west, approved by the Commissioner of the General Land Office July 24, 1916; supplemental topographic plat of township 20 north, range 16 west, approved March 28, 1917.

There shall also be sent up in the original the illustrative profile marked "Plaintiff's Exhibit F," and the report of L. L. Janes, ecologist.

3. A copy of this stipulation shall be incorporated in each of the records on appeal.

Thus done and signed this August 17, 1921.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.
(Signed) J. A. THIGPEN,
S. L. HEROLD,
FOSTER, LOONEY & WILKINSON,
FRANK J. LOONEY,
HAMPDEN STORY,
J. W. WILKINSON,
Attorneys for Appellants and Cross-Appellees.

69 *Clerk's Certificate.*

UNITED STATES OF AMERICA.

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 54 to 68 next preceding this certificate contain full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said court, numbered 3537, wherein the Gulf Refining Company of Louisiana is appellant and cross-appellee, and The United States of America is appellee and cross-appellant, as full, true, and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 53 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

I further certify that the plaintiff's Exhibit "F," Illustrative Profile, and the report of L. L. Janes, ecologist, forwarded to this court in the original, are transmitted herewith to the Supreme Court of the United States in the original, as per stipulation of counsel copied at page 66 of this record.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 24th day of August, A. D. 1921.

[SEAL.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

70 THE UNITED STATES OF AMERICA.

The President of the United States to the Gulf Refining Company of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within 30 days from the date hereof, pursuant to a petition and order of appeal and assignment of errors sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein the Gulf Refining Company of Louisiana is appellant and cross-appellee and the United States of America is appellee and cross-appellant, bearing the number 3537 on the docket of the United States Circuit Court of Appeals for the Fifth Circuit, to show cause, if any there be, why the decree rendered against the said the United States of America and in said petition and order of appeal and assignment of errors mentioned, should not

be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable William Howard Taft, Chief Justice of the United States, this 15th day of August in the year of our Lord one thousand nine hundred and twenty-one.

[SEAL.]

R. W. WALKER,
United States Circuit Judge.

No. 3537. United States Circuit Court of Appeals, Fifth Circuit. Gulf Refining Company of Louisiana, appellant and cross-appellee, vs. the United States of America, appellee and cross-appellant. Citation. Filed 20 day of August, 1921.

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals.

Service of the within citation of appeal accepted and acknowledged this 19th day of August, 1921.

J. A. THIGPEN,
S. L. HEROLD,
Attorneys of record
for Appellants and Cross-Appellees.

(Indorsed on cover:) File No. 28,456. U. S. Circuit Court Appeals, 5th Circuit. Term No. 501. The United States of America, appellant, *vs.* The Gulf Refining Company of Louisiana. Filed August 31st, 1921. File No. 28,456.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1922

No. [redacted] 162

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

SOUTHWESTERN GAS AND ELECTRIC COMPANY, CADDO OIL AND GAS COMPANY, AND GULF REFINING COMPANY OF LOUISIANA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED AUGUST 21, 1922.

(28457)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 502.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

SOUTHWESTERN GAS AND ELECTRIC COMPANY, CADDO OIL AND GAS COMPANY, AND GULF REFINING COMPANY OF LOUISIANA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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A United States of America, United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the honorable Richard W. Walker, the honorable Nathan P. Bryan, and the honorable Alex. C. King, circuit judges.

SOUTHWESTERN GAS AND ELECTRIC COMPANY, Caddo Oil & Gas Company, and Gulf Refining Company of Louisiana, appellants and cross-appellees,

versus

THE UNITED STATES OF AMERICA, APPELLEE AND cross-appellant.

Be it remembered, that heretofore, to-wit, on the 25th day of May, A. D. 1920, a transcript of the record in the above styled cause, pursuant to an appeal and cross-appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3538, as follows, to-wit:

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA,

versus No. 1162 In Equity.

SOUTHWESTERN GAS & ELECTRIC COMPANY, ET AL.

TRANSCRIPT OF APPEAL

Taken by Defendants and Cross Appeal, taken by the Plaintiff, to the United States Circuit Court of Appeals, Fifth Circuit, New Orleans, Louisiana.

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1 (BILL OF COMPLAINT).

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,

vs. No. 1162 in Equity.

Southwestern Gas and Electric Company, Caddo Gas and Oil Company, Gulf Refining Company of Louisiana, Defendants.

To the Honorable Judge of the District Court of the United States for the Western District of Louisiana, Sitting within and for the Shreveport Division:

The United States of America, by its solicitor, Robert A. Hunter, Special Assistant to the Attorney General, acting herein under the direction and by the authority of the Attorney General of the United States, brings this bill of complaint against the following defendants:

Southwestern Gas and Electric Company, a corporation organized under the laws of the State of Delaware, domiciled and having an office and place of business in the City of Shreveport, Western District of Louisiana, with John D. Wilkinson, a resident of the City of Shreveport, Louisiana, as its agent for the service of process;

Caddo Gas and Oil Company, a corporation organized under the laws of the State of West Virginia, domiciled in the City of Shreveport, Western District of Louisiana, with S. S. Hunter, a resident of Shreveport, Louisiana, as its President; and

Gulf Refining Company of Louisiana, a corporation organized under the laws of the State of Louisiana, and domiciled in the City of New Orleans, Eastern District of said State;

and thereupon complains and shows unto your Honor:

I.

That on and before December 15, 1908, the plaintiff was the owner, as a part of its public domain, of a certain tract of land, which was then unsurveyed public land of the United States, but which has since been surveyed under the direction and with the approval of the Secretary of the Interior, and is now known and described as Lot Number One (1) of Section Thirteen (13) in Township Twenty (20), North of Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the
2 Parish of Caddo, Western District of Louisiana, containing twenty-seven and eighty-seven hundredths acres, as shown by a plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana.

That on or prior to the aforesaid date plaintiff was, and still is, the owner and entitled to the possession of the above described land, and likewise of all oil, petroleum, gas and other minerals therein contained.

II.

On December 15, 1908, in order to conserve the public interests, and in aid of such legislation as might thereafter be proposed, recommended and enacted, the President of the United States, by and through the Secretary of the Interior, and under the legal authority vested in him so to do, duly and regularly withdrew from settlement and entry and from all other forms of appropriation, all of the public lands in Townships 15 to 23 North, and Ranges 10 to 16 west, Louisiana Meridian, which withdrawal included the lands herein involved.

On the 2nd day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, by executive order, and under special authority conferred by the act of June 25, 1910, entitled "An Act to authorize the President of the United States to make withdrawals of Public lands in certain cases," ratified and confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, above set forth, insofar as it affected the land described herein, including the same as a part of Petroleum Reserve Number Four. That such lands so withdrawn by said order of July 2, 1910, including the land herein involved, were withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been vacated, but both are now in full force and effect, and said

lands above named, including the property involved herein, ever since the date of the first withdrawal, December 15, 1908, have not been subject to exploration for oil, petroleum, gas, or other minerals, or to location or entry of any kind under the general land laws, or mineral laws, of the United States.

III.

Plaintifff avers that notwithstanding said orders of withdrawal, and in violation of the rights of the plaintiff, and contrary to its laws, and without any valid title, lawful right or authority, the defendants herein, in bad faith, entered upon and took possession of the tract particularly described in paragraph I hereof, for the purpose of drilling thereon for oil and gas, and did so drill one well known as Gilbert Special No. One, and did withdraw therefrom large quantities of oil and gas, the exact amount and value of which is unknown, all to the great and irreparable injury of plaintiff.

IV.

That on and prior to the dates of the withdrawal orders hereinabove set forth, to-wit: December 15, 1908, and July 2, 1910, none of the said defendants, or any one form whom the defendants, or any of them, claim, was in the possession of said land, or a bona fide occupant thereof in diligent prosecution of work thereon leading to a discovery of oil or gas, and no such discovery was in fact made prior to said orders of withdrawal, nor until long after said orders were issued, and had become effective to withdraw said land from location, entry and other appropriation.

V.

That no mineral location was in fact made by any of the defendants herein on the land upon which said well is located, but plaintiff avers that it is informed and believes that the oil and gas withdrawn from the said tract of land, as above set forth, were extracted therefrom under the color of a pretended lease dated September 8, 1909, recorded in Book 47, page 639, of the Records of Caddo Parish, Louisiana, made by the Caddo Gas and Oil Company to the Gulf Refining Company of Louisiana, and under a pretended lease from the Southwestern Gas and Electric Company, defendant herein, to the said Gulf Refining Company of Louisiana.

Plaintiff avers that the said Southwestern Gas & Electric Company, Caddo Gas and Oil Company, and
4 the Gulf Refining Company of Louisiana, defendants, have no right, title or interest in and to the said tract of land, but acting under the said pretended leases, and not otherwise, and subsequent to the withdrawal orders hereinabove referred to, the said Gulf Refining Company of Louisiana entered upon the said tract of land, drilled a well thereon, as aforesaid, and took therefrom a large quantity of oil and gas, which it has converted to its own use; that the said Gulf Refining Company of Louisiana received the price of the oil and gas so produced, marketed and sold by it, and paid a royalty therefrom to the said Southwestern Gas and Electric Company, and to the Caddo Gas and Oil Company, defendants, the amounts of which is to the plaintiff unknown.

The exact quantity of oil and gas so produced, withdrawn from the land, marketed and sold, the value thereof, and the price and royalties paid to and received by

the defendants herein, being unknown to the plaintiff, full discovery from the said defendants is sought.

VI.

Except as in this bill stated, the Plaintiff has no other knowledge or information concerning the nature of any other claims asserted by the defendants herein, or any of them, and therefore leaves said defendants to set forth their respective claims and interests.

In that behalf plaintiff alleges that the said defendants have not, and never had, any right, title or interest in and to, or lien upon, said land, or any part thereof, or any right, title or interest in and to the petroleum, minerals, oil or gas deposited therein, but, on the contrary, the acts of these defendants who have entered upon the said land and drilled a well thereon, and used and appropriated the petroleum and gas deposited therein, were all in violation of the laws of the United States, and of the rights of plaintiff.

VII.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of the Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

5 VIII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of Twenty Thou-

sand ($20,000) Dollars, and that all of the defendants herein acted in bad faith in the premises.

IX.

In consideration whereof and forasmuch as the plaintiff is without full, adequate and complete remedy in the premises save in a Court of Equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That the said lease made September 8, 1909, by the Caddo Gas and Oil Company to the Gulf Refining Company of Louisiana, by act of record in Conveyance Book 47, page 639, of the records of Caddo Parish, Louisiana, and the lease from the Southwestern Gas and Electric Company to the said Gulf Refining Company of Louisiana, all as set forth in paragraph V of this bill, be declared null and void, and that the same be cancelled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendants or any of

them, and that the possession of said land may be restored to the plaintiff.

5. That said defendants, during the progress of this cause, and finally and perpetually thereafter, may be enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon the plaintiff's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.

6 6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of boring and extracting, storing and transporting oil or gas, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

8. That plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please the Court that writs of subpoena issue, directed to the Southwestern Gas and Electric Company, and to the Caddo Gas and Oil Company, defendants herein, commanding them at a certain time and under a certain penalty therein to be named, to appear before this Honorable Court and then and there full, true and direct answers make to all and singular the premises, and to stand to perform and abide by such order, direction and decree as may be made against them in the premises and as shall be meet and agreeable to equity.

And may it further please the Court, that an order be granted and entered, directed to the Gulf Refining Company of Louisiana, not an inhabitant of, or now within this District, and served as provided by law, directing said defendant to appear and answer in this cause on a day certain to be designated by this Court.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

7

AFFIDAVIT.

United States of America,
Northern District of California.

D. R. Thompson, being first duly sworn, deposes and says:

That he is Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish

of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location and all forms of appropriation by order of December 15, 1908, and July 2, 1910; and that from the examination of such lands, and from the examination of the records of the General Land Office and of the local Land Office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing bill of complaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 28th day of July, 1917.

C. W. CALHEART,
(Seal) Clerk United States District Court,
District of California.

Deputy Clerk, U. S. District Court,
Northern District of California.

8 ORDER.

The above and foregoing bill of complaint and affidavit being considered, and it appearing to the Court that the Gulf Refining Company of Louisiana, defendant, is not an inhabitant of the Western District of Louisiana, and is domiciled outside of said District,

It is, therefore, ordered that the said absent defendant be, and it is hereby, directed to appear, and answer to the above and foregoing bill of complaint at Shreveport, in the Western District of Louisiana, on the 15 day of Sept., 1917,

at the hour of ten o'clock A. M., and that service of duly certified copies of the said bill of complaint and of this order be made on said defendant, whenever found.

Thus done and signed this 2 day of Aug. 1917.

GEO. WHITFIELD JACK,
United States Judge.

Indorsed:—Bill of Complaint. Filed Aug. 2, 1917.

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9 (DEFENDANTS' ANSWER TO BILL OF COMPLAINT).

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,
vs. No. 1162 In Equity.
Southwestern Gas & Electric Company, Caddo Oil & Gas Company, Gulf Refining Company of Louisiana, Defendants.

The joint and several answer of the Southwestern Gas & Electric Company, the Caddo Oil & Gas Company and the Gulf Refining Company of Louisiana, defendants in the above entitled and numbered cause:

And now come the said defendants and for answer to the bill of complaint herein filed say:

I.

Defendants deny that on December 15th, 1908, plaintiff was the owner of the tract of land which it describes

in its bill by the pretended description of Lot Number One (1), Section Thirteen (13), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Parish of Caddo, Western District of Louisiana, as shown by plat of survey approved March 28th, 1907, by Clay Tallman, Commissioner of the General Land Office and Ex-Officio Surveyor General for the State of Louisiana. And defendants show that there is not and never has been such a tract of land as Lot One (1), Section Thirteen (13), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, and that the purported survey showing such lot is illegal, null and void and the execution and approval thereof beyond the power, jurisdiction or authority of the General Land Office of the United States, for the reason that the said tract of land was not at the date of said survey in the ownership of the United States but was in private ownership as hereinafter more fully appears.

Defendants, therefore, further deny that plaintiff was or is the owner or entitled to the possession of the said land or of any of the minerals therein contained.

II.

Defendants show that all of the allegations of Article II of the bill of complaint are utterly immaterial and irrelevant to any of the issues involved in this case, and that the same call for neither affirmation nor denial; and defendants, therefore, move that said Article II of the bill be stricken out and that part of the bill dismissed; but under reservation of their rights the defendants show that said land could not have been included in any withdrawal order because it was not at any of the dates referred to the property of the United States and consequently, that the United States

had no interest in said property nor any right to affect the same by any withdrawal.

III.

Defendants deny that they entered upon or took possession of the property herein involved in violation of any of the rights of the plaintiff or contrary to its laws, or without any valid title, lawful right or authority, or in bad faith; but they aver that lawfully and under a valid title they are in possession of said property, and that the defendant, Gulf Refining Company of Louisiana, drilled thereon a well known as "Gilbert's Special No. 1", from which it produced some oil, the amount and value of which is set out further in this answer.

IV.

Defendants say that all of the allegations of the fourth Article of the Bill of Complaint are immaterial and irrelevant to the issues of this case, for the reason that the said property is not nor was it at any of the dates referred to the property of the United States; and that they do not claim the property under any discovery under the mining laws of the United States, but under a valid title long antedating the withdrawal orders referred to, as hereinafter is fully set out.

V.

Defendants admit that no mineral location was ever made by any of them upon the land on which said well is located, but defendants show that the said well was drilled and the oil extracted therefrom under a valid lease of date September 8, 1909, from the Caddo Oil & Gas Com-

pany to the Gulf Refining Company of Louisiana, recorded in Conveyance Book 57, page 590, of the records of Caddo Parish, Louisiana, certified copy of which instrument will be produced upon trial hereof; and that the said Caddo Oil & Gas Company acquired the said land from Robert L. Gilbert on September 3, 1907, by act passed before F. A. Leonard, Clerk and Ex-Officio Notary Public in and for Caddo Parish, recorded in Book 44, page 409, Conveyance Records of Caddo Par-
11 ish, Louisiana, certified copy of which will be produced upon trial hereof, and that the said Robert L. Gilbert acquired said property by homestead entry made on November 6, 1895, and duly perfected, under which entry patent issued from the United States to the said Gilbert conveying full and complete title to the East Fractional half of Section Thirteen (13), Township Twenty(20) North, Range Sixteen (16) West, Louisiana Meridian, on November 11, 1901, from and after which date said Gilbert was vested with the full and complete title to the East Fractional half of Section Thirteeen (13), Township Twenty (20) North, Range Sixteen (16) West, including the property herein in controversy.

Defendants therefore aver that (the Southwestern Gas & Electric Company subsequently purchasing all of the property of the Caddo Oil & Gas Company) none of your defendants acted without right, title or interest to the said land, but they specially say that the Caddo Oil & Gas Company, being the full and absolute owner of the said tract, having executed a valid lease thereof to the Gulf Refining Company of Louisiana that the well drilled thereon by the last named defendant was so drilled rightfully and lawfully, and that defendants owe no sum whatever to the plaintiff. The quantity of oil produced, withdrawn from the wells, marketed and sold, the value thereof, the price and royalty paid to and received by defend-

ants, are matters in which the plaintiff has no interest, but, as aforesaid, these facts are fully set out hereinafter.

VI.

Defendants deny that plaintiff has no knowledge or information concerning the title of defendants, and specially deny that they are without any right, title or interest in the said property or that their acts in entering on the land and drilling a well thereon, extracting and selling the production therefrom, are in violation of the laws of the United States or of the rights of the plaintiff. But in this connection defendants show that having a title deraigned from Robert L. Gilbert, to whom a patent issued from the United States to the East Half of Section Thirteen (13), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, according to field notes and plat of survey on file in the General Land Office of the United States, made by A. W. Warren, United States Deputy Surveyor, approved August 31, 1839, in which said fractional east half of section Thir-
12 teen is bounded by the ordinary high water mark of Ferry Lake (a navigable body of water) defendants are the owners and entitled to the possession and the minerals of all of the said tract of land, which includes the property for which this suit is brought, and over which the aforesaid illegal survey was extended; and defendants show that under the laws of the United States their title extends to the ordinary high water mark of Ferry Lake and is not limited by any meander line.

VII.

Defendants deny that they are unlawfully trespassing on the land or asserting any unlawful claim thereto, but

reiterate that their possession thereof and their claim thereto is valid and lawful, and deny that the plaintiff has any interest in said property.

VIII.

For further answer defendants show that in its operation on said property the Gulf Refining Company of Louisiana extracted therefrom 31,177.44 barrels of oil of the market value of $28,248.92 Dollars, out of the proceeds of the sale of which it paid to its co-defendant, Caddo Oil & Gas Company, the sum of Nine Hundred and Thirty-three and 30/100 ($933.30) Dollars, and to its co-defendant, the Southwestern Gas and Electric Company the sum of $2,602.55 Dollars, all of which acts in drilling on the land, producing the oil and settling therefor were done in good faith and not in bad faith as set up by plaintiff.

IX.

And now defendants say that under the aforesaid purchase from R. L. Gilbert and in the lease aforesaid, all of your defendants acted in good faith, and that the Gulf Refining Company of Louisiana in drilling upon the property acted in good faith under a title from one whom it believed to be the owner, and whom it was advised was the owner of the said property, and relying in good faith upon the title based upon the patent to R. L. Gilbert aforesaid as covering this property; and that all of the acts and conduct of the defendants thereunder were in absolute good faith, and that the well drilled as aforesaid was drilled in good faith, and in the event it should be held that plaintiff is the owner of the said property, that defendant is entitled to be reimbursed the entire cost of equipping, drilling and operating the said well before it

can be held liable for any oil extracted therefrom; and that, in any event, defendants are entitled to
13 have the amount so expended offset against the value of the production of said well. And defendants show that the cost of drilling, equipping and operating the said well up to July 31st, 1917, amounts to the sum of $19,695.46 Dollars, detailed as follows, to-wit:

Drilling and equipping	$8,791.95 Dollars.
Operating Expenses to July 31, 1917..	10,903.51 Dollars.
Total	$19,695.46 Dollars.

Wherefore, having made full and complete answer to all of the allegations of the aforesaid bill of complaint, defendants pray that said bill be dismissed with all costs in this behalf sustained.

In the alternative, in the event the Court should hold that the plaintiff is the owner of the said property, then defendants pray that they may be adjudged not liable to the plaintiff on account of the oil taken from the said property until the said plaintiff shall have repaid and reimbursed the said defendants for the cost of all drilling, equipping and operating the said well from which the said oil was secured; and that in any event, if plaintiff be adjudged entitled to value of such oil, that there be judgment in favor of defendants, and against plaintiff, in the amount so expended in the production of said oil.

Defendants further pray for all orders necessary in the premises, and for general relief.

THIGPEN & HEROLD,
ALEXANDER & WILKINSON,
Solicitors for Defendants.

Indorsed:—Answer. Filed Sept. 17, 1917.

14 (PLAINTIFF'S REPLY TO DEFENDANTS' SET OFF AND COUNTER CLAIM).

In the District Court of the United States, for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,
vs. No. 1162 In Equity.
Southwestern Gas & Electric Company, Caddo Oil & Gas Company, Gulf Refining Company of Louisiana, Defendants.

I.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and for reply to the set off and counterclaim asserted by defendants in their answer filed in the above numbered and entitled cause, shows:

II.

That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.

III.

Plaintiff denies all the allegations of the said answer relating to said set-off and counterclaim, and, particularly, paragraph 9, and the prayer of said answer.

IV.

Plaintiff shows that the said defendants are not entitled to any set-off, or counterclaim, whatsoever in the premises.

V.

Further replying plaintiff avers that the said defendants entered upon the land described in the bill of complaint and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendants were wilful and knowing trespassers upon said land.

VI.

Plaintiff further shows, in the alternative, that even if the said defendants are entitled to a set off, or counter-claim, in any amount, which is denied, the sum claimed by the defendants is excessive and should not be allowed.

VII.

Wherefore, plaintiff prays that the set off and counterclaim asserted by the defendants be denied and disallowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Reply to Defendants' Set off and Counterclaim. Filed Sep. 19, 1917.

16 (INTERROGATORIES TO GULF REFINING CO.)

(1).

In your answer to the bill of complaint herein, it is stated that the Gulf Refining Company of Louisiana drilled the well known as Gilbert Special No. 1. State when said well was commenced and when completed.

(2).

In your said answer it is further stated that the production of oil from the land in controversy was 31,177.44 barrels, of the value of $28,248.92. State whether or not the production of said well as given in your said answer is exact, or estimative.

(3).

State the total production of oil from the said well, (a) up to July 1st, or July 31, 1917, and (b) from July 1st, or July 31, 1917, to January 1, 1918.

(4).

State whether or not the said well was operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

(5).

Was a separate and complete record kept by the Gulf Refining Company of Louisiana of the oil produced by said well? If so, state how, and in what manner said record was kept.

(6).

If the production as given by you in your answer to the bill of complaint and in your answers to the preceding interrogatories is based upon an estimate of the quantity of oil produced by well in suit, in connection with other wells not in suit, or if you have stated that said production is estimative, and not exact, then state (a) the total production of all wells operated in conjunction with the wells in suit, naming and giving the location of such other wells, and (b) the manner in which you arrived at, or figured the production of the well in suit.

17 (7).

State the total market value of the oil produced by the Gulf Refining Company of Louisiana from the land in controversy and say whether or not the value as given by you in your answer is exact or approximate, and, furthermore, state upon what the value as given is based.

(8).

State whether or not the Gulf Refining Company of Louisiana is engaged, and was engaged at the time said well was drilled and operated, in the manufacture and sale, as well as the production of oil, and also state whether the oil produced by it, from the land in controversy, was sold to other persons, or corporations, or was manufactured by it into products of oil.

(9).

What are the principal products manufactured from petroleum or crude oil?

(10).

State the total value, either exactly if you know, or approximately if you do not know exactly, of the products manufactured by the Gulf Refining Company of Louisiana, from the oil extracted from the land in controversy.

(11).

State the total profits made by the Gulf Refining Company of Louisiana (a) from the sale of any or all of the crude oil extracted from the land in controversy, and, (b), the profits made by it from the manufacture and sale of the products of said crude oil.

(12).

If any of the crude oil extracted from the land in suit by the Gulf Refining Company of Louisiana was sold to any other company or person, state where and in what manner delivery thereof was made.

(13).

How much money was paid as royalties by the Gulf Refining Company of Louisiana to the other de-
18 fendants herein, out of the proceeds of the sale of oil taken from the land in controversy, and state the amount of such royalties which the said Gulf Refining Company of Louisiana is now holding, pending the result of this suit, and the names of the persons for whose account said royalties are held.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

19 (ANSWER OF GULF REFINING CO. TO INTERROGATORIES).

In the District Court of the United States, for the Western District of Louisiana.

United States of America, Complainant,

vs. No. 1162 In Equity.

Southwestern Gas & Electric Company, et al., Defendants.

In the above numbered and entitled cause, now comes the Gulf Refining Company of Louisiana, through C. R. Minor, its third vice-president, a proper officer of the said corporation for the answering of interrogatories to it herein, and answers said interrogatories, under oath, as follows, to-wit:

In Interrogatory No. 1, defendant answers:

Gilbert Special No. 1 was commenced on January 18th, 1911, and was completed on March 11th, 1911.

To Interrogatory No. 2, defendant answers:

The figures as to the number of barrels and the value of the oil taken from the land in controversy, to July 31st, 1917, are exact.

To Interrogatory No. 3, defendant answers:

(a) The total production from the said well to July 31st, 1917, was 31,177.44 barrels, of the value of $28,248.92;

(b) From July 31st, 1917, to January 1st, 1918, 857.42 barrels, of the value of $1,697.12.

To Interrogatory No. 4, defendant answers:

The well was operated by itself.

To Interrogatory No. 5 defendant answers:

Yes, a record was kept of daily production of the oil from said well.

To Interrogatory No. 6, defendant answers:

The production as given above is exact.

20 To Interrogatory No. 7, defendant answers:

The production from said land up to January 1st, 1918, was 32,034.85 barrels of oil, of the value of $29,946.04. The value given is exact and is based on posted pipe line prices at the date of the purchase of the oil, same being at prevailing price of oil in the field at such date.

To Interrogatory No. 8, defendant answers:

The Gulf Refining Company of Louisiana is not now, nor was it at the time the well was drilled and operated, engaged in the manufacture of products of oil; the oil produced by it was sold to the Gulf Pipe Line Company.

To Interrogatory No. 9, defendant answers:

Gasoline, kerosene and lubricating oils.

To Interrogatory No. 10, defendant answers:

The Gulf Refining Company of Louisiana never at any time manufactured any product from the oil extracted from the land in controversy.

To Interrogatory No. 11, defendant answers:

(a) The Gulf Refining Company of Louisiana made no profit from the sale of any or all of the crude oil extracted from the land in controversy, outside of the profit made by it in its drilling operations—the value of the oil at the mouth of the well less the cost of drilling, equipment and operation. It purchased 32,034.86 barrels, of the market value of $29,946.04; the cost of equipping, drilling and operating said well was $20,364.84. The Gulf Refining Company of Louisiana sold the said oil to the Gulf Pipe Line Company at the same price at which it purchased same plus a pipage charge of ten cents per barrel ($3203.48). As to this pipage charge of $3203.48, defendant is unable to say whether or not any portion of same represents a profit, for the reason that it has no data from which it could say whether or not the charge of ten cents per barrel represents a profit on the carriage of the oil, after reasonable allowance for depreciation and obsolescence of pipe line. If no profit be allowed on account of this pipage charge, which was earned as a carrier and has no relation to operations as a producer of oil the total profits made by the
21 Gulf Refining Company of Louisiana was $12,784.68.

(b) The Gulf Refining Company of Louisiana never at any time manufactured any product from the oil extracted from the land in controversy.

To Interrogatory No. 12, defendant answers:

The crude oil extracted from the land in suit by the Gulf Refining Company of Louisiana was sold to the Gulf Pipe Line Company, a corporation organized and existing under the laws of the State of Texas; delivery thereof being made from the pipe lines of the Gulf Refining Company of Louisiana to the pipe lines of the Gulf Pipe Line Company, at the receiving station of the latter company in the State of Texas.

To Interrogatory No. 13, defendant answers:

There were delivered by the Gulf Refining Company of Louisiana, as royalty, to the other defendants herein, 4,003.04 barrels of oil out of the production from the property in controversy, which oil it purchased from the said defendants for $4,681.29, at the prevailing market price in the field at the date of such purchase; the number of barrels of oil delivered to each of its said co-defendants and the purchase price thereof being as follows:

	Bbl.	Value.
Caddo Oil & Gas Company	1,412.85	933.30
S. W. Gas & Electric Co.	2,590.19	3,747.99
	4,003.04	4,681.29

There are no royalties being held up pending the result of this suit; there having been no pipe line runs from said well since October, 1917.

C. R. MINOR.

Sworn to and subscribed before me on this the 15th day of March, 1918.

J. A. THIGPEN,
Notary Public in and for
Caddo Parish, Louisiana.

(Seal)

Indorsed:—Answer of Gulf Refining Company of Louisiana to Interrogatories. Filed Apr. 20, 1918.

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22 (ORDER APPOINTING SPECIAL MASTER).

United States District Court.

United States,

vs. No. 1162.

Southwestern Gas & Electric Company, et al.

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court and economize its time, and for the purpose of expediting the final hearing of said cause, the Court of its own motion appoints Edward H. Randolph, Esq., Special Master.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court or elsewhere as may be advisable.

RUFUS E. FOSTER, Judge.

March 29, 1918.

Filed Mar. 29, 1918

23 759046 4-205r.

B Department of the Interior,

R General Land Office,
Washington, Jan. 31, 1918.

I hereby certify that the annexed copy of patent is a true and literal exemplification from the record which is in my custody in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal) L. T. C. LAMAR,
Recorder of the General Land Office.

4-772-r. 249

The United States of America,

To all to whom these presents shall come, greeting:
Homestead Certificate No. 3901.
Application 6290.

Whereas, there has been deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Natchitoches, Louisiana, whereby it appears that, pursuant to the Act of Congress approved 20th May, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain", and the acts supplemental thereto, the claim of Robert L. Gilbert has been established and duly consummated, in conformity to law, for the Fractional East Half of Section thirteen in Township Twen-

ty North, of Range sixteen west, of Louisiana Meridian in Louisiana, containing one hundred and fifty-five acres, according to the Official Plat of the Survey of the said land, returned to the General Land Office by the Surveyor General.

Now know ye that there is, therefore, granted by the United States unto the said Robert L. Gilbert the tract of land above described: To have and to hold, the said tract of land with the appurtenances thereof, unto the said Robert L. Gilbert and to his heirs and assigns forever.

24 In testimony whereof, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twentieth day of November, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the one hundred and twenty-sixth.

By the president, T. ROOSEVELT,

By F. M. McKEAN, Secretary.

(Seal) C. H. BRUSH, Recorder of the General Land Office.

759046
dmg-15.

Filed: Jan. 21, 1919.

24½ 4-207.

DMG-"FS" Department of the Interior,
"B" General Land Office,
CRGO Washington, D. C.

January 16, 1918.

I hereby certify that the annexed extract copy of Louisiana tract book, so far as it relates to section 13, T. 20 N., R. 16 W., Louisiana Meridian, is a true and literal exemplification from the tract book on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

(Seal) D. K. PARROTT,
Acting Assistant Commissioner
of the General Land Office.

No. 1162 S 20 G & E. Co. Plaintiff G. Filed Jan. 21, 1919.

25 Description of Tract.

(Offered at Sale on the 27th Jany., 1840).

4-600.

Township No. 20 N., Range No. 16 W., District of Natchitoches, La.

Tp. withdrawn from all disposal, by Secy. Dec. 15, 1908. See "A" to R. & R. Natch: Dec. 15, 1908. Petroleum

Reserve No. 4. Ex. Order July 2, 1910. Resurvey (or Restoration survey) Plat approved July 24, 1916, (no areas shown, original plat governs). Letter "X" July 16, 1910—54239.

Suppl. Plats (Sheets 1 and 2) of part of Tp. approved March 28, 1917, received in local office, Baton Rouge.

Part of Section—Section—Township—Range—Contents, Acres, 100ths—Rate per Acre, Dollars, Cents—Purchase money, Dollars, cts—Name of Purchaser—date of Sale—No. of Receipt and Certificate of Purchase—To whom Patented.

April 14,1917, 745008.

N½ of N½ fr. 52.00; 13; 20; 16.
Home; 13; 20; 16; 95.50; 10.00; Charles Theodore Chapman, Nov. 23, 1885; 3096; 3096; Cancelled. See to R. & R. October 14, 1875.
S½ of N½ of fr. 43.50.
Hd. frl. E½; 13; 20; 16; 155.00; 10.00; Robert L. Gilbert; Nov. 6, 1895: 6290; F. C. 3901 May 16/01.
N½ of S½ of fr. 31.50.
Lot 1—27.87.
S½ of S½ of fr. 28.00.

26 No. 1162—U. S. vs. Southwestern Gas & Electric Co., et al.

(ITEM NO. 9½).

Act of sale from Robert L. Gilbert to Caddo Gas & Oil Company, dated September 3, 1907, of the following lands: Fractional Section 13, township 20, north, range 16, west, in the Parish of Caddo, Louisiana, less the following:

The East half of the east half of the northeast quarter of said section, which is already the property of the vendee Company, and 15 acres running north and south on the west line of the northeast quarter of the northeast quarter, the entire length of the said northeast of northeast, and west a sufficient distance between parallel lines to make said quantity of fifteen acres, which the said vendor hereby reserves.

(ITEM NO. 10).

Being Lease from Caddo Oil & Gas Company to the Gulf Refining Company of Louisiana, dated September 8, 1909, of the NE¼ of the SW¼ of Section 1, township 20, range 16, containing about 40 acres. SE¼ of the SW¼ of Section 1, township 20, range 16, containing 40 acres. All the lands which on April 20, 1908, were owned by R. L. Gilbert, being about 15 acres, in the NE¼ of the NE¼ of Section 13, township 20, range 16, and including all the premises which were embraced in a mineral lease from said R. L. Gilbert, as lessor, to the said Caddo Company, lessee, dated April 20, 1908. (4) All that portion lying north of the Ferry Lake Traverse line, containing 16.12 acres of section 35, in township 200, range 16, these being the premises included in a mineral lease from W. H. B. Croom, et al., to said Caddo Company, dated April 28, 1909.

27 (ITEM NO. 11).

Being Act of sale from the Caddo Gas & Oil Company to the Southwestern Gas & Electric Company, dated October 28, 1912, of the lands described in item No. 4 next above, together with various other lands in said deed described.

28 (No. 1162.)

(Extract from Deft. Gulf Refining Co. Ex. No. 2).

Grand Total	32,034.86	29,946.04
Plus Pipage Earnings on 32,034.86 Bbls. at 10c. Bbl.		3,203.48
		33,149.52

Statement Showing Cost of Drilling, Equipping and Operations Gilbert Special No. 1, Caddo Parish, Louisiana, to December 31st, 1917.

Commenced Drilling Jan. 18, 1911. Completed March 11, 1911.

Expenditures.

Drilling and Equipping Well No. 1,	8, 791.95	
Operating Expense to Dec. 31, 1917	11,572.89	20,364.84

Oil Production (Gross).

32,034.86 Bbls. at Various prices Plus Pipage	33,149.52	33,149.52
(In Red)		12,784.68

Total Pipe Line Runs Divided and Paid for as Follows:

	Barrels	Value
Caddo Oil & Gas Company	1,412.85	933.30
Southwestern Gas & Electric Co.	2,590.19	3,747.99
Gulf Refining Co. of La.	28,031.82	25,264.75
	32,034.86	29,946.04

5 Mar. 21-1918-5.

Filed Jan. 27, 1919.

29 (EXCEPTION GULF REFINING CO. TO REPORT OF MASTER).

In the District Court of the United States, for the Western District of Louisiana.

United States of America,
Plaintiff,
vs. No. 1162 In Equity.

Southwestern Gas & Elect. Co., et al,
Defendant.

Now comes the Gulf Refining Company of Louisiana, defendant herein, and excepts to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January 1919, and for cause of exception shows:

1.

That the Master has in his said report stated and certified that the land in controversy is the property of the United States as unsurveyed lands; whereas he should have certified and reported that the property in controversy is an integral part of the east fractional half of Section 13, Township 20 North, Range 16, West, a tract of surveyed land long since patented by the United States.

2.

That the Master in said report stated and certified that the Defendants,

"while conceding that this case falls in the same category as that of the Jeems Bayou Hunting & Fishing Club,

that the case should be differentiated from that case because the area involved in this case is comparatively very small and that the maxim de minimis lex non curat should apply":

whereas in truth and in fact the defendant made no such admission and the Master should not have so reported.

3.

That the Master in said report stated and certified that

"They contend that in these particular cases the lines run by Warren are substantially, meander lines, admitting that, as contended for by plaintiff, at some points in skirting the shore of Ferry Lake, Warren did abruptly (and technically speaking wrongfully) quit the shore line almost at right angles and deliberately left out, between his course and the real sinuosity of the lake shore, high timbered lands in place, but that he also embraced within his meander as land, bits of water almost equalling the land left out, which resulted in the Government losing nothing, because in patenting the particular areas the Government got paid for as many acres as if Warren had carefully followed the contour and sinuosities of the lake; therefore, if Warren did wrongfully leave out between his meander and the actual shore the high timber lands, it is a case of damnum absque injuria so far as the Government is concerned;"

Whereas defendant made no such admission or contention and the Master should have reported and certified that defendant contends and insisted before him that Warren's line in fact and in law a meander line and not a line of boundary; the arguments of the defendant relative

to water areas included in the acreage shown on Warren's survey being merely arguendo.

4.

The Master reported and certified that the line run by Warren relative to the property in controversy was not in truth a meander line and was not run according to the principles governing the running of meander lines; whereas he should have reported and certified that said line was in truth and in fact a meander line, and not a line of boundary.

5.

That the Master has in said report erroneously stated and certified that Warren's survey of Township 20 North, Range 16 West, was not a proper survey of the township; whereas he should have reported that under all circumstances under which the survey was made and the instruments then in use, the survey was not only a reasonably correct one, but was made with a remarkable degree of accuracy.

6.

That the Master in said report erroneously stated that defendant's only claim is,

"That taking the whole of the northern shore of Ferry Lake, including Sections 3, 10, 11, 12, 13, and 24, surveyed by Warren, the area of land lying between the Warren meander line and Kidder's establishment of the 173.09 contour line, was 69.56 acres, and that Warren's survey included within it about 44 acres of land which in fact was water; so that the Government as respects this part of the township would only lose the difference, or 25.56 acres, which defendants virtually admit still technically

remain in the Government as left out of the Warren survey;"

whereas the facts are, and the Master should have certified and reported, that defendant never made any admission that the land "still technically remains in
31 the Government as left out of the Warren Survey" but, on the contrary, that it contended and insisted that the land in controversy was embraced within the Warren survey as part of the east fractional half of Section 13, Township 20 North, Range 16 West, a tract of surveyed land long since patented by the United States.

7.

That the Master reported and certified that

"Defendants cannot now eke out any title to land, admittedly not within the boundaries of the property patented, on the ground, that their ancestors in title did not get quite the acreage and, therefore, the present defendants are entitled to hold entirely new areas belonging to the Government as an offset;"

whereas the facts are, and the Master should have so reported, that defendant never made any such contention, but has insisted and still insists, that the tract of land in controversy is within the boundaries of the property patented; defendant's counsel making the argument as to the water surface referred to only by way of argument.

8.

That the Master has in said report stated and certified that

"Baldly stated, the proposition of defendants is in effect that if the Government has made a gain by selling water for land, it would be equitable to permit the occupant of a piece of unsurveyed land in this township, which land is about equal to the water area previously sold, to compensate and defeat the Government's claim for said unsurveyed land by replying to the suit 'you have already been paid for all the land actually in this township and I should keep this piece and you will really suffer no loss'",

whereas the defendant never made such contention and the Master should not have so reported and certified, but should have stated that the defendant insisted that the land in controversy was not unsurveyed land but an integral part of the east fractional half of Section 13, Township 20 North, Range 16 West, long since patented by the United States; the arguments advanced by counsel for the defendant with reference to water surface being by way of illustration and argument only.

32 9.

That the Master has in said report stated and certified that defendants

"contend that area is so little and when it was left out by Warren so utterly worthless that the Government's claim should be dismissed on the ground of de minimis lex non curat;"

whereas the Master should have reported aad certified that the defendant's contention and insistence was that Warren's purported meander line was in truth and in fact and in law a meander line, and not a line of boundary, and that the tract in controversy was not left out of the Warren Survey, but formed an integral part of the Sub-

division of the east fractional half of Section 13, Township 20 North, Range 16 West, long since patented by the United States; the reference by defendant as to the small quantity of land involved being part of its argument only, as going to disprove the plaintiff's contention.

10.

That the Master reported and certified as a fact,

"that at the points complained of, these lines of Warren were not run according to the above principles, but that he arbitrarily in such instances left the shore at right angles thereto, blazed his way thro high lands heavily timbered, and then returning to the shore line some distance apart from his departure";

whereas the Master should have certified and reported that the lines run by Warren as meander lines were in truth and in fact meander lines, according to the principles of surveying and the laws of the United States.

11.

That the Master has in said report stated and certified that the Warren meander line was line of boundary, and not a meander line; whereas he should have reported and certified that the lake front boundary of the subdivision described as "east fractional half of Section 13, Township 20 North, Range 16 West", long since patented by the United States, is the ordinary high water mark of Ferry Lake, and not the Warren meander line.

33 12.

That the Master in his said report has stated and certified that the expense incurred by this defendant in drill-

ing, equipping and operating the well on the premises in controversy was $12,784.68; whereas he should have found and reported such expenses to have been $20,364.84.

13.

That the Master has reported and certified that this defendant should be charged for pipe line earnings on the oil produced from the property in controversy; whereas the should have reported and recommended that said pipe line earnings, which were simply charges for transportation and in no sense profit, should not be considered.

14.

That the said Master has in said report certified that this defendant should pay interest upon the amount of judgment rendered against them, at the rate of five (5%) per cent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against this defendant interest should run only from the date that same is liquidated by decree of this Court.

Wherefore, defendant prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,
Solicitors for Defendant Gulf
Refining Company of Louisiana.

Indorsed: Exception of the Gulf Refining Company of Louisiana to the report of the Special Master. Filed Jan. 30, 1919.

34 (EXCEPTION TO MASTER'S REPORT BY SW. GAS & ELEC. CO. & CADDO OIL & G. CO).

In the District Court of the United States for the Western District of Louisiana.

United States of America,
Plaintiff,
vs. No. 1162 In Equity.

Southwestern Gas & Elect. Co. et al,
Defendants.

Now comes the Southwestern Gas & Elect. Company and the Caddo Oil & Gas Company, defendants herein, and except to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That the Master has in his said report stated and certified that the land in controversy is the property of the United States as unsurveyed lands; whereas he should have certified and reported that the property in controversy is an integral part of the east fractional half of Section 13, Township 20 North, Range 16 West, a tract of surveyed land long since patented by the United States.

2.

That the Master in said report stated and certified that the defendants.

"while conceding that this case falls in the same category as that of the Jeems Bayou Hunting & Fishing Club, that the case should be differentiated from that case because the area involved in this case is comparatively very small and that the maxim de minimis lex non curat should apply;"

whereas in truth and in fact the defendants made no such admission and the Master should not have so reported.

3.

That the Master in said report stated and certified that

"They contend that in these particular cases the lines run by Warren are substantially meander lines, admitting that, as contended for by plaintiff, at some points in skirting the shore of Ferry Lake, Warren did abruptly (and technically speaking wrongfully) quit the shore line almost at right angles and deliberately left out, between his courses and the real sinuosities of the lake shore, high timbered lands in place, but that he also embraced within his meander as land, bits of water almost equalling the land left out, which resulted in the Government losing nothing, because in patenting the particular areas the Government got paid for as many acres as if Warren had carefully followed the contour and sinuosities of the lake; therefore, if Warren did wrongfully leave out between his meander and the actual shore the high timber lands, it is a case of damnum absque injuria so far as the Government is concerned;"

whereas defendants made no such admission or contention and the Master should have reported and certified that defendants contend and insisted before him that

Warren's line was in fact and in law a meander line and not a line of boundary; the arguments of the defendants relative to water areas included in the acreage shown on Warren's survey being merely arguendo.

4.

The Master reported and certified that the line run by Warren relative to the property in controversy was not in truth a meander line and was not run according to the principles governing the running of meander lines; whereas he should have reported and certified that said line was in truth and in fact a meander line, and not a line of boundary.

5.

That the Master has in said report erroneously stated and certified that Warren's survey of Township 20 North, Range 16 West, was not a proper survey of the township; whereas he should have reported that under all the circumstances under which the survey was made and the instruments then in use, the survey was not only a remarkably correct one, but was made with a remarkable degree of accuracy.

6.

That the Master in said report erroneously stated that the defendant's only claim is

"that taking the whole of the northern shore of Ferry Lake, including Sections 3, 10, 11, 12, 13, and 24, surveyed by Warren, the area of land lying between the Warren meander line and Kidder's establishment of the 173.09

contour line, was 69.56 acres, and that Warren's survey included within it about 44 acres of land which in fact was water; so that the Government as respects this part of the township would only lose the difference, or 25.56 acres, which defendants virtually admit still technically remain in the Government as left out of the Warren survey;"

whereas the facts are, and the Master should have certified and reported, that defendants never made any admission that the land still technically remains in the Government as left out of the Warren survey"; but, on the contrary, that they contended and insisted that
36 the land in controversy was embraced within the Warren survey as part of the east fractional half of Section 13, Township 20 North, Range 16 West, a tract of surveyed land long since patented by the United States.

7.

That the Master reported and so certified that

"Defendants cannot now eke out any title to land, admittedly not within the boundaries of the property patented, on the ground that their ancestors in title did not get quite the acreage and, therefore, the present defendants are entitled to hold entirely new areas belonging to the Government as an offset;"

whereas the facts are, and the Master should have so reported that defendants never made any such contention, but have insisted and still insist, that the tract of land in controversy is within the boundaries of the property patented; defendant's counsel making the argument as to the water surface referred to only by way of argument.

8.

That the Master has in said report stated and certified that

"Baldly stated, the proposition of defendants is in effect that if the Government has made a gain by selling water for land, it would be equitable to permit the occupant of a piece of unsurveyed land in this township, which land is about equal to the water area previously sold, to compensate and defeat the Government's claim for said unsurveyed land by replying to the suit 'you have already been paid for all the land actually in this township and I should keep this piece and you will really suffer no loss;"

whereas defendants never made such contention and the Master should not have so reported and certified, but should have stated that the defendants insisted that the land in controversy was not unsurveyed land but an integral part of the east fractional half of Section 13, Township 20, Range 16 West, long since patented by the United States; the arguments advanced by counsel for the defendants with reference to water surface being by way of illustration and argument only.

9.

That the Master has in said report stated and certifed that defendants

"contend the area is so little and when it was left out by Warren so utterly worthless that the Government's claim should be dismissed on the ground of de minimis lex non curat;"

37 whereas the Master should have reported and certified that the defendants' contention and insistence was that Warren's purported meander line was in truth and in fact and in law a meander line, and not a line of boundary, and that the tract in controversy was not left out of the Warren survey, but formed an integral part of the subdivision of the east fractional half of Section 13, Township 20 North, Range 16 West, long since patented by the United States; the reference by defendants as to the small quantity of land involved being part of its argument only, as going to disprove the plaintiff's contention.

10.

That the Master reported and certified as a fact,

"that at the points complained of, these lines of Warren were not run according to the above principles, but that he arbitrarily in such instances left the shore at right angles thereto, blazed his way thro high lands heavily timbered, and then returning to the shore line some distance apart from his departure;"

whereas the Master should have certified and reported that the lines run by Warren as meander lines were in truth and in fact meander lines, according to the principles of surveying and the laws of the United States.

11.

That the Master has in said report stated and certified that the Warren meander line was a line of boundary, and not a meander line; whereas he should have reported and certified that the lake front boundary of the subdivision

described as " east fractional half of Section 13, Township 20 North, Range 16 West," long since patented by the United States, is the ordinary high water mark of Ferry Lake, and not the Warren meander line.

12.

That the said Master has in said report certified that these defendants should pay interest upon the amount of judgment rendered against them, at the rate of five (5%) per cent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against these defendants interest should run only from the date that same is liquidated by decree of this Court.

Wherefore, defendants pray that these exceptions be sustained and that judgment be rendered in their favor accordingly.

38 ALEXANDER & WILKINSON,
THIGPEN & HEROLD,
Solicitors for Defendants.

Indorsed: Exception of the Southwesern Gas Electric Company & the Caddo Oil and Gas Company to the report of the Special Master. Filed Jan. 30, 1919.

39 (DECREE).

In the District Court of the United States, for the Western District of Louisiana, Shreveport Division.

United States of America,
v. No. 1162 In Equity.
Southwestern Gas & Electric Company, Caddo Gas & Oil Company, Gulf Refining Company of Louisiana.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

1. That the report filed herein January 11, 1919, by E. H. Randolph, Special Master in Chancery, be and the same is hereby approved and confirmed; and, accordingly

II. That the land described in the bill of complaint, namely, Lot One (1), of Section Thirteen (13), in Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo Western District of Louisiana, containing twenty-seven and eighty-seven hundredths (27.87) acres, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and ex-officio Surveyor General for the State of Louisiana, be and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

III. That the lease made September 8, 1909, by the Caddo Gas & Oil Company to the Gulf Refining Company of Louisiana, recorded in Book 47, page 639, of the records of the parish of Caddo, State of Louisiana, and the lease

from the Southwestern Gas & Electric Company to the Gulf Refining Company of Louisiana, insofar as the said leases may include directly or indirectly the above described property, be and the same are declared null, void and held for naught, and, to that extent, the said leases are annulled and shall be cancelled.

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of the said land shall be restored to plaintiff.

V. That the said defendants, namely, Southwestern Gas & Electric Company, Caddo Gas & Oil Company, and Gulf Refining Company of Louisiana, shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas or minerals, on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and, accordingly that a writ of injunction issue restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of the Gulf Refining Company of Louisiana, and the said defendant is hereby condemned and ordered to pay to plaintiff, the full sum of Four Thousand, Eight Hundred and Ninety-nine and 91/100 ($4,899.91) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VII. That the United States of America do have and recover of and from the Gulf Refining Company of Louisiana and the Caddo Gas & Oil Company, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Nine Hundred and Thirty-three and 30/100 ($933.30) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VIII. That the United States of America do have and recover of and from the Gulf Refining Company of Louisiana and the Southwestern Gas & Electric Company, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Three Thou-
sand, Seven Hundred and Forty-seven and 99/100
41 ($3,747.99) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

IX. That the said defendants be and they are hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

X. That the said defendants be, and they are hereby condemned and ordered to pay all costs of this suit.

XI. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreveport, Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and

instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree, furnish bond, with good and solvent surety, to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of One Thousand ($1,000.00) Dollars, which said bond may hereafter be increased, or reduced, as the Court
42 may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil or other property that may come into his hands as receiver. The said receiver shall surrender possession of the said land and of all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said receiver, to obtain such accounting from the said receiver as the Court may order, to require the delivery to the United States of such land and property, and the accounting and payment to be made by the receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to

discharge or remove said receiver, and to appoint another receiver, or receivers, and to do and perform such other acts, in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

Thus done, read and signed in open Court this 4th day of August, 1919.

RUFUS E. FOSTER,
United States Judge.

Indorsed: Decree. Filed Aug. 12, 1919.

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43 (DEFENDANTS' PETITION & ORDER OF APPEAL).

In the District Court of the United States, for the Western District of Louisiana.

United States of America,
Plaintiff,
vs. No. 1162 In Equity.

Southwestern Gas & Electric Company, Caddo Oil & Gas Company, Gulf Refining Company of Louisiana,
Defendants.

To the Honorable Judge of the District Court of the United States for the Western District of Louisiana, sitting within and for the Shreveport Division:

The above named defendants, Southwestern Gas & Electric Company, Caddo Oil & Gas Company, and the Gulf

Refining Company of Louisiana, feeling themselves aggrieved by the decree made and entered in this cause on the 13th day of August, 1919, do hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit for the reasons specified in the assignment of errors, which has been filed, and now pray that their appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers on which said decree was based, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans.

And your petitioners further pray that the proper order touching the security to be required of them to perfect said appeal be made.

J. A. THIGPEN,
S. L. HEROLD,
Solicitors for Defendants.

ORDER.

Let the foregoing petition be granted and the appeal allowed which shall operate as a supersedeas upon the defendants giving bond conditioned as required by law in the sum of Fifteen Thousand Dollars, ($15,000.00).

RUFUS E. FOSTER,
United States District Judge.

Sept. 23rd, 1919.

44 Indorsed: Petition and order for appeal. Filed Sep. 23, 1919.

B.

45 (DEFENDANTS' ASSIGNMENT OF ERRORS)

In the District Court of the United States for the Western District of Louisiana.

United States of America,
Plaintiff,
vs. No. 1162 In Equity.

Southwestern Gas & Electric Company, et al,
Defendants.

And now, on this the 22nd day of September, 1919, come all the defendants by their solicitors, Thigpen & Herold, and say that the decree entered in the above cause on the 13th day of August, 1919, is erroneous and unjust to the defendants; and for specification of said errors, show:

First.

The Court erred in holding that the property in controversy is public lands of the United States.

Second.

The Court erred in holding that the premises in controversy is not a part of the east fractional half of Section Thirteen (13), Township Twenty (20) North, Range Sixteen (16) West, patented by the United States to Robert L. Gilbert on the 26th day of September, 1906.

Third.

The Court erred in holding that the meander line run by Warren, United States Deputy Surveyor, is a line of boundary.

Fourth.

The Court erred in holding that the east fractional half of Section 13, Township 20 North, Range 16 West, owned by defendants under a regular chain of title from Robert L. Gilbert, the patentee thereof, does not extend to Ferry Lake, as shown by the approved official plat of survey by A. W. Warren, United States Deputy Surveyor.

Fifth.

The Court erred in holding without any evidence to support the finding that Warren's meander of Ferry Lake in the east fractional half of said Section 13,
46 Township 20 North, Range 16 West, was not run to denote the boundary of the property as being the natural monument of Ferry Lake, but is in itself the boundary.

Sixth.

The Court erred in holding that there were any facts or circumstances shown in the evidence disclosing any intention to limit the property known as east fractional half of Section 13, Township 20 North, Range 16 West, to actual traverse lines or to cause such result to follow the survey.

Seventh.

The Court erred in condemning this defendant for the value of any oil produced from the premises in controversy.

Wherefore, defendants pray that the said decree be reversed and the District Court directed to dismiss the bill; and for general relief.

J. A. THIGPEN,
J. D. WILKINSON,
S. L. HEROLD,
Solicitors for Defendants.

Indorsed: Assignment of Errors. Filed Sept. 22, 1919.

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47 SUPERSEDEAS BOND ON APPEAL.

In the District Court of the United States for the Western District of Louisiana.

United States of America, Plaintiff,
vs. No. 1162 In Equity.
Southwestern Gas & Electric Company, Caddo Oil & Gas Company, Gulf Refining Company of Louisiana, Defendants.

Know all men by these presents: That we, Southwestern Gas & Electric Company, Caddo Oil & Gas Company and the Gulf Refining Company of Louisiana, as principal, and the American Surety Company of New York, as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above cause, in the full sum of Fifteen Thousand ($15,000.00) Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at Shreveport, Louisiana, on this the 23rd day of September, 1919.

The condition of the above obligation is such that,

Whereas on the 13th day of August, 1919, in the District Court of the United States for the Western District of Louisiana in a suit pending in that Court wherein the United States of America was plaintiff and Southwestern Gas & Electric Company, Caddo Oil & Gas Company and the Gulf Refining Company of Louisiana were defendants, numbered on the Equity docket 1162, a decree was rendered, filed and signed against the said Southwestern Gas & Electric Company, Caddo Oil & Gas Company and the Gulf Refining Company of Louisiana, and the said Southwestern Gas & Electric Company, Caddo Oil & Gas Company and the Gulf Refining Company of Louisiana having obtained an appeal with supersedeas to the United States Circuit Court of Appeals for the Fifth Circuit:

48 Now, if the said Southwestern Gas & Electric Company, Caddo Oil & Gas Company and the Gulf Refining Company of Louisiana shall prosecute such appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

SOUTHWESTERN GAS & ELECTRIC COMPANY,
By S. L. HEROLD.
CADDO OIL & GAS COMPANY,
By S. L. HEROLD.
GULF REFINING COMPANY, OF LOUISIANA,
By S. L. HEROLD.
AMERICAN SURETY COMPANY, OF N. Y.,
By R. L. GAFFNEY, Atty. in fact.

Approved:
This 23rd day of September, 1919.
RUFUS E. FOSTER,
United States District Judge.

Indorsed:—Supersedeas Bond. Filed Sept. 23, 1919.

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49 (PLAINTIFF'S PETITION, ORDER OF APPEAL AND ASSIGNMENT OF ERRORS).

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,

vs. No. 1162 In Equity.

Southwestern Gas & Electric Co., et al.

To the Honorable, the Judge of the District Court of the United States, for the Western District of Louisiana:

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, and with respect represents:

That on August 4, 1919, this Court entered a final decree in said cause, from which the defendants herein have appealed, and that in said decree there was, in part, error greatly to the prejudice and injury of plaintiff, as will more fully appear by the assignment of errors filed herewith. Plaintiff desires to take a cross-appeal from said decree to the United States Circuit Court of Appeals for the Fifth Circuit.

Wherefore, it is prayed that a cross-appeal may be allowed to plaintiff in this cause from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, and that proper orders for the allowance of such appeal may be made by this Court.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

50 ORDER.

The foregoing petition for a cross-appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed a cross-appeal herein, from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 10 day of Nov., 1919.

RUFUS E. FOSTER,
United States Judge.

ASSIGNMENT OF ERRORS ON PLAINTIFF'S CROSS APPEAL.

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1162.
Southwestern Gas & Electric Co., et al.

Now comes plaintiff, the United States of America, and in connection with its petition for a cross appeal herein, presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to-wit:

I.

51 The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counter-claim of the Gulf Refining Company of Louisiana, for costs and expenses incurred in producing said oil, and in not entering a decree in favor of plaintiff for the total value of said oil.

II.

The Court erred in allowing to said defendant, as an offset or counterclaim, the cost of the production of said oil and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had been withdrawn from any appropriation whatever by orders of the President of the United States, dated, respective-

ly, December 15, 1908, and July 2, 1910, which orders were issued for the purpose of conserving the public interest and in aid of pending and proposed legislation. The said well was drilled in violation of each of said orders and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said well.

III.

The Court erred in applying herein the rules relating to a case of innocent trespass, for the reason that there was no evidence whatever to show that the defendants acted in good faith in extracting and removing the oil in question.

IV.

The Court further erred, in any event, in finding and holding that the said defendants were entitled to deduct from the value of the oil extracted from the land in suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not
52 be allowed as an offset, credit or counterclaim herein.

Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim for the cost of drilling, equipping and operating the well in suit, and that a decree be rendered and entered, in favor of plaintiff herein, for the full value of the oil extracted and removed from the land in controversy, as shown by the report of the Master in Chancery, or, in

default of such relief, that the cause be remanded to the District Court with instructions to enter a decree in favor of the plaintiff for the full value of said oil, without offset or deduction of any kind.

Plaintiff further prays that, in any event, the cost of drilling and equipping said well be deducted and excluded from any allowance that may be made to defendants as an offset or counterclaim herein.

Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Petition for Cross Appeal, Order thereon, and Assignment of Errors. Filed Nov. 12, 1919. B.

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53 STIPULATION OF COUNSEL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,
vs. No. 1162.
Southwestern Gas & Electric Co., et al.

Counsel for plaintiff and defendants do hereby enter into the following stipulation relative to the contents of the record on appeal, in the above numbered and entitled cause:

Whereas, this cause together with suits numbered 1158, 1163 and 1164, were consolidated in the District Court

for trial with the case entitled United States vs. C. W. Lane, et al, No. 1153, on the docket of said Court, which suit has likewise been appealed to the United States Circuit Court of Appeals for the Fifth Circuit; and

Whereas, in order to reduce the size of the several transcripts counsel have agreed that the record on appeal in the said cause, No. 1153, United States vs. C. W. Lane, et al., shall contain and include certain testimony, exhibits, the Master's report, the opinion of the Court, certain general stipulations of counsel and other matters applicable to all of the cases so consolidated, including maps and exhibits sent up in the original; and,

Whereas, counsel have agreed to incorporate in the transcript in this cause only the pleadings, exhibits and other things specially applicable to this suit; now, therefore:

It is stipulated that the transcript of appeal in the said cause, entitled United States vs. C. W. Lane, et al., No. 1153, on the docket of the United States District Court for the Western District of Louisiana, shall be a part of the record on appeal in this suit, and shall be applicable thereto.

54 It is stipulated that the Clerk shall prepare the transcript of appeal in this cause, and shall copy into and incorporate therein the following, to-wit:

1. Bill of Complaint.

2. Answer of defendants.

3. Plaintiff's reply to setoff and counterclaim.

4. Interrogatories propounded by plaintiff to Gulf Refining Company of Louisiana.

5. Answer of Gulf Refining Company of Louisiana to Interrogatories.

6. Order appointing E. H. Randolph Special Master in Chancery.

7. Patent from the United States to Robert L. Gilbert for the fractional E½ of Section 13, T. 20 N., R. 16 W.

8. Extract from tract book relating to Sec. 13, T. 20 N., R. 16 W., marked Plaintiff's G.

9. Act of Sale from Robert L. Gilbert to Caddo Oil & Gas Company.

10. Lease of date September 8, 1909, from Caddo Oil & Gas Co., to Gulf Refining Company of Louisiana.

11. Act of Sale from Caddo Oil & Gas Company to Southwestern Gas & Electric Company.

The Clerk is authorized to make an abstract of the instruments referred to in numbers 9, 10 and 11, supra, and to include in the transcript, in lieu of the whole of said instruments, the names of the vendors and vendees, or lessors and lessees, the dates of the acts and the description.

12. That portion of statement identified by the witness James W. Neal, marked Gulf Refining Company's Exhibit No. 2, which shows the total production and value

of oil extracted from the land in suit. The portion of said statement to be incorporated begins on page 3 with the words, Grand Total and the figures 32034.86, which represent the total number of barrels, and $29,946.04, which represent the total value of the oil, and extends to and includes the remainder of said page 3. All other portions of said statement are to be omitted. Said page 3 likewise includes a statement of expenses of drilling and operating the well, which should also be incorporated in the transcript.

13. Exceptions of Gulf Refining Company of Louisiana to Master's report.

14. Exceptions of Southwestern Gas & Electric Co. to Master's report.

15. Final decree.

16. Defendants petition for appeal, order thereon, assignment of errors and appeal bond.

55 17. Plaintiff's petition for cross appeal, order thereon and assignment of errors.

18. This stipulation.

Thus done and signed this 18th day of May, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.

THIGPEN & HEROLD,
WILKINSON, LEWIS & WILKINSON,
Attorneys for Defendants.

Filed May 19, 1920.

CERTIFICATE.

I, W. B. LEE, Clerk of the District Court of the United States for the Western District of Louisiana, Fifth Circuit, do hereby certify that the foregoing fifty-five pages contain and form a full, true, correct and complete transcript of the record, assignment of errors and all proceedings had in a cause wherein The United of America is Plaintiff and Southwestern Gas & Electric Company, et al, are Defendants, No. 1162 In Equity on the Docket of said Court, as fully as the same remains on file and of record in my office at Shreveport, Louisiana—this transcript having been prepared in accordance with stipulation of counsel, a copy of which accompanies this tran script.

Witness my hand and seal of said Court at the City of Shreveport, Louisiana, on this the 21st day of May, A. D. 1920.

(Seal) W. B. LEE, Clerk United States District Court, Western District of Louisiana.

Citations omitted from the printed record, being filed in the Original.

67 That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and submission.

Extract from the Minutes of February 24th, 1921.

SOUTHWESTERN GAS AND ELECTRIC COMPANY et al. *versus* THE UNITED STATES OF AMERICA, ETC.	No. 3538.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., special assistant to the Attorney General, for appellee and cross-appellant, and S. L. Herold, Esq., for appellants and cross-appellees, was submitted to the court.

Opinion of the court—Filed June 22nd, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

C. W. LANE ET AL., APPELLANTS AND CROSS-APPELLEES, *versus* THE UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT.	No. 3536.
GULF REFINING COMPANY OF LOUISIANA, APPELLANT AND CROSS-APPELLEE, *versus* THE UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT.	No. 3537.
68 SOUTHWESTERN GAS & ELECTRIC COMPANY et al., appellants and cross-appellees, *versus* THE UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT.	No. 3538.
GULF REFINING COMPANY OF LOUISIANA ET AL., appellants and cross-appellees, *versus* THE UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT.	No. 3539.
THE UNITED STATES OF AMERICA, APPELLANT, *versus* MRS. JESSIE M. LA ROBADIERRE ET AL., APPELLEES.	No. 3540.

Appeals and cross-appeals from the District Court of the United States for the Western District of Louisiana.

S. L. Herold, J. A. Thigpen (D. Edward Greer, Hampden Story, and J. D. Wilkinson on the brief), for appellants and cross-appellees in Nos. 3536, 3537, 3538, and 3539.

Robert A. Hunter, special assistant to the Attorney General, for appellee and cross-appellant in Nos. 3536, 3537, 3538, and 3539.

Robert A. Hunter, special assistant to the Attorney General, for appellant in No. 3540.

S. L. Herold, J. A. Thigpen (D. Edward Greer, Hampden Story, and J. D. Wilkinson on the brief), for appellees in No. 3540.

69 Before Walker, Bryan, and King, circuit judges.

Bryan, circuit judge: These suits were brought by the United States to recover several small tracts of land in Caddo Parish, Louisiana, and also to compel an accounting for oil and gas produced therefrom by appellants. The lands lie in separate tracts along the edge of Ferry Lake in township 20 north, of range 16 west, Louisiana meridian. This township was first surveyed in 1839 by United States Deputy Surveyor A. W. Warren, and the plat filed by him represents several fractional sections bordering on the lake. According to that plat the lands in litigation were included within these fractional sections.

Because of the discovery of oil thereon the township was resurveyed in 1917, under the direction of Arthur D. Kidder, supervisor of surveys for the General Land Office. By this later survey the lands in litigation are represented as lying between the meander lines of Warren's survey and Ferry Lake, and are designated as new subdivisions omitted from Warren's survey.

The fractional sections surrounding the lake had been sold and patented from time to time, and acquired by appellants long before the resurvey of 1917 was made.

There are no disputed questions of fact. It was admitted by stipulation that Kidder's survey was accurately made, and that Kidder correctly reestablished and reproduced Warren's survey; that the contour line of Ferry Lake, at mean high water, in 1812, when Louisiana was admitted into the Union; in 1839, when Warren made his survey; and in 1917, when Kidder made his survey, was 173.09 feet above mean Gulf level; that all the tracts of land in litigation lie above that elevation, and are upland in character; and that Ferry Lake is, and was in 1812 and 1839, a navigable body of water. It was also shown beyond question that

70 Warren in his survey ran the section lines to, and accurately established corners and set meander posts on, the contour line of Ferry Lake.

In running out his meander lines, Warren did not always follow the exact contour of the lake, but he approximated it very closely in so far as the lands involved in these suits are concerned. In some instances, irregular areas of land which jut out into the water

are outside the meander lines, and in other instances, where the land sharply recedes, water is inside the meander lines. Very little difference in acreage between the land so excluded and the water so included is shown by the testimony. In at least one of the cases the area of water included exceeds the area of land excluded.

In the first mentioned of these suits Warren's survey represents the land in that fractional quarter-quarter section as containing 26.80 acres; Kidder's survey adds as a new subdivision 5.67 acres. In the second suit, Warren's survey represents 114.80 acres; Kidder's survey adds 11.49 acres. In the third suit, Warren's survey represents 155 acres; Kidder's survey adds 27.87 acres. In the fourth suit, Warren's survey represents 23 acres; Kidder's survey adds 12.72 acres. In the fifth and last suit, Warren's survey represents 83.75 acres; Kidder's survey adds 22.71 acres. It is for these additional acres the Government sues.

The cases were consolidated, and the court entered decrees sustaining the right of the Government to recover the lands, and also holding appellants liable to account for various amounts realized from the sale of oil and gas, but allowing credit for the costs of production. The Government by cross-appeal in the first, second, third, and fourth suits contends that appellants should not be
71 allowed to deduct these expenses, but should be held liable as wilful trespassers. In the fifth suit, that of United States v. LaRobadierre and the Gulf Refining Co., No. 3540, the original defendants have not appealed, but the Government by direct appeal assigns as error the deduction of expenses of operation and the failure to hold the Gulf Refining Co. liable in solido with the other defendant.

It is the contention of the United States that the lands in litigation, lying between the meander lines of Warren's survey and Ferry Lake, are public lands which were never surveyed until 1917. Appellants, on the other hand, assert title as owners of the fractional sections.

Section 2396 of the Revised Statutes deals with the boundaries and contents of public lands, and provides that boundary lines shall be ascertained by running straight lines from established corners to opposite corresponding corners, except that, in those portions of a fractional township where corresponding corners cannot be fixed, the boundary lines shall be ascertained by running from established corners "to the watercourse, Indian boundary line, or other external boundary of such fractional township." There is no other provision of law for the running of meander lines along a watercourse, but they are usually run by surveyors for the purpose of computing acreage. It is proper that they should show the sinuosities of the banks of the watercourse; for the watercourse, and not the meander line, is the true boundary. St. Paul & P. Railroad Co. v. Schurmeir, 7 Wall., 272; Hardin v. Jordan, 140 U. S. 371; Mitchell v. Smale, 140 U. S. 406; Producers Oil Co. v. Hanzen, 238 U. S. 325.

It was Warren's duty to bound the fractional sections on the lake, and it is apparent from his survey and field notes that it was his intention to do so. The survey is not invalidated by the failure
72 to include within the meander lines small, irregular, areas of land. In Mitchell v. Smale, supra, the survey called for 4.53 acres, but it was held that title to 25 additional acres also passed by the patent. In that case the Supreme Court said:

"The difficulty of following the edge or margin of such projections, and all the various sinuosities of the water line, is the very occasion and cause of running the meander line, which by its exclusions and inclusions of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream. The official plat made from such survey does not show the meander line, but shows the general form of the lake deduced therefrom, and the surrounding fractional lots adjoining and bordering on the same. The patents when issued refer to this plat for identification of the lots conveyed, and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water, regularly follow."

Meander lines, and not watercourses, are held to be boundaries, where there is no body of water within a reasonable distance therefrom, as in Horne v. Smith, 159 U. S. 40; Producers Oil Co. v. Hanzen, supra; or where there is no body of water at all, as in French-Glenn Live Stock Co. v. Springer, 185 U. S. 47; Gauthier v. Morrison, 232 U. S. 452; Chapman & Dewey Lumber Co. v. St. Francis Levee District, 232 U. S. 186; and Lee Wilson & Co. v. United
73 States, 245 U. S. 24; or where there is gross fraud, as in Security Land & Exploration Co. v. Burns, 193 U. S. 167. These cases are relied upon by the Government, but in our opinion they are inapplicable to the facts under consideration. In none of the cases cited on the Government's briefs is the rule stated in Mitchell v. Smale overruled or even modified; but, on the contrary, in several of them that case is cited with approval. Here the watercourse was in existence and was actually meandered. There is no suspicion or suggestion that Warren's survey of the lands in litigation was fraudulent. That part of his survey which is in question in these cases was made with a fair degree of accuracy, and for the purposes of computing the acreage and of showing the sinuosities of Ferry Lake as a boundary. It is not impeached by the fact that a subsequent survey, made with great minuteness because of the discovery of oil, disclosed comparatively slight variations from the established boundary.

There being no appeal by the original defendants in United States vs. LaRobadierre et al., No. 3540, the decree in that case is affirmed.

In the other cases the decrees are reversed on the original appeals, with directions to dismiss the bills of complaint; and the cross-appeals are dismissed.

74 *Judgment.*

Extract from the minutes of June 22nd, 1921.

SOUTHWESTERN GAS & ELECTRIC COMPANY ET AL.
versus
THE UNITED STATES OF AMERICA, ETC. } No. 3538.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, reversed on the original appeal, with directions to dismiss the bill of complaint; and that the cross appeal sued out herein be, and the same is hereby, dismissed.

75 *Petition for appeal and order allowing same—filed August 20, 1921.*

In the United States Circuit Court of Appeals, Fifth Circuit.

SOUTHWESTERN GAS AND ELECTRIC COMPANY ET AL.,
appellants and cross appellees,
versus
UNITED STATES OF AMERICA, APPELLEE AND CROSS appellant. } No. 3538.

To the honorable the judges of the United States Circuit Court of Appeals in and for the Fifth Circuit:

Now into this honorable court comes the United States of America, appellee and cross appellant, and says that on June 22, 1921, this court entered a decree herein in favor of appellants and cross appellees and against the United States of America, in which decree there was error greatly to the prejudice and injury of appellee and cross appellant, as will more fully appear by the assignment of errors, which is attached hereto and filed herewith.

Wherefore the United States of America prays that an appeal may be allowed in said cause from this court to the Supreme Court of the United States and that proper orders for the allowance of such an appeal be made by this court..

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Order.

The foregoing petition for an appeal in the above numbered and entitled cause from the United States Circuit Court of Appeals of

the Fifth Circuit to the Supreme Court of the United States
76 being considered, and in the assignment of errors being attached thereto and filed therewith, it is ordered:

That an appeal be granted and allowed in the above numbered and entitled cause to the United States of America as prayed for from the United States Circuit Court of Appeals of the Fifth Circuit to the Supreme Court of the United States.

Thus done and signed this 15th day of August, 1921.

(Signed) R. W. WALKER,
Judge, United States Circuit Court of Appeals, Fifth Circuit.

Assignment of errors—Filed August 20th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

SOUTHWESTERN GAS AND ELECTRIC COMPANY et al., appellants and cross-appellees, *versus* UNITED STATES OF AMERICA, APPELLEE AND cross-appellant.	No. 3538.

Now comes the United States of America, appellee and cross appellant in the above numbered and entitled cause, and in connection with the petition for an appeal herein presents this assignment of errors and says that the opinion and decree entered in this cause by the United States Circuit Court of Appeals of the Fifth Circuit on June 22, 1921, is erroneous in the following particulars, to-wit:

1.

The court erred in holding that according to the plat of survey made by A. W. Warren, United States deputy surveyor,
77 the lands in litigation were included within the fractional sections represented by said plat as bordering upon Ferry Lake, whereas the court should have held that the tracts involved in said consolidated suits were not included within said fractional sections as delineated upon said plat but were represented thereon only as a part of Ferry Lake and not as a part of any fractional section shown on said plat.

2.

The court erred in holding that said survey of A. W. Warren was made with a fair degree of accuracy for the purpose of computing the acreage and the sinuosities of the lake as a boundary; whereas the court should have held that there was manifest error in said survey or a material variation between the lines thereof and Ferry Lake; that said survey did not follow the sinuosities of the lake shore, or approximate its contour, or afford a reliable means of ascertaining the quantity of land in said fractional section.

3.

The court erred in holding that the said A. W. Warren intended to make the said lake the boundary of the land in suit, whereas the court should have held that the record of said survey does not show that the lines thereof were run with the meander or along the margin of said lake, and that, as actually made upon the ground, the lines of said survey were not run with the meander or along the margin of said lake.

4.

The court erred in not holding that said tract was, at the time of and since said survey, high land in place, covered with native forest trees and vegetation characteristic of hill land, and was of the same character, geological formation, and quality as the lands included by said Warren in his survey.

5.

The court erred in not holding that, inclusive of the land in suit, the said A. W. Warren omitted from his survey of the township 987.77 acres of high land in place between the so-called meander line and the mean high water elevation of Ferry Lake as it existed when the State of Louisiana was admitted into the Union and when said survey was made, and which mean high water elevation was known to said surveyor.

6.

The court erred in failing to hold that the tract in controversy was not included in said survey, either in fact or in law, and was not described or embraced in the patent relied upon by defendants.

7.

The court erred in holding that there were no disputed issues of fact and in overruling the findings of fact made by the master in chancery herein and approved by the district judge, including the finding that the land in suit was left unsurveyed by the said A. W. Warren and belonged to the public domain of the United States.

8.

The court erred in reversing the decree of the district court in so far as same was favorable to the United States and in remanding said cause to the district court with directions to dismiss the bill of complaint.

9.

The court erred in dismissing the cross-appeal and in not reversing the decree of the district court in so far as it allowed the defendants to offset the cost of drilling the wells against the

value of the oil extracted from the land in suit, and in not remanding said cause with directions for the entry of a decree in favor of plaintiff for the full value of the oil, less only the expenses incurred by defendants in operating the wells.

Wherefore, the United States of America, appellee and cross-appellant, prays that the opinion and decree of the United States Circuit Court of Appeals for the Fifth Circuit be reversed; that the decree of the district court be affirmed in so far as it is favorable to the United States of America; that the said cause be remanded with directions for the entry of a decree in favor of the United States of America for the full value of the oil taken by defendants from said land, less only the cost of operating the wells, and excluding and disallowing as an offset or credit against the value of said oil the sums expended or costs incurred by defendants in drilling said wells, to the end that the United States may recover the value of said oil free of all costs incurred in discovering or reaching the same; and for general relief.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Stipulation as to transcript and original exhibits—filed August 20th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

C. W. LANE ET AL., appellants and cross-appellees, *versus* UNITED STATES OF AMERICA, appellee and cross-appellant.	No. 3536.
GULF REFINING COMPANY OF LOUISIANA, appellant and cross-appellee, *versus* UNITED STATES OF AMERICA, appellee and cross-appellant.	No. 3537.
SOUTHWESTERN GAS & ELECTRIC COMPANY ET AL., appellants and cross-appellees, *versus* UNITED STATES OF AMERICA, appellee and cross-appellant.	No. 3538.
GULF REFINING COMPANY OF LOUISIANA ET AL., appellants and cross-appellees, *versus* UNITED STATES OF AMERICA, appellee and cross-appellant.	No. 3539.

With regard to the appeals to be taken in the above numbered and entitled causes by the United States to the Supreme Court of the United States, it is stipulated by counsel for all parties as follows, to-wit:

1. That the transcripts of appeal shall be made up of the printed records filed in the United States Circuit Court of Appeals with the addition thereto of the proceedings had in said court of
81 appeals, and all stipulations of counsel contained in said printed records shall be applicable to these appeals.

2. That all exhibits transmitted to the Supreme Court of the United States in the original in connection with the appeal in case No. 3522, entitled Jeems Bayou Fishing & Hunting Club et al., v. United States (No. 407 on the docket of the Supreme Court of the United States), and which were offered in evidence and constitute part of the record in these suits, shall be deemed and considered as a part of the record on appeal in the above suits, said exhibits being as follows: Plat of survey made by A. W. Warren, deputy surveyor, approved August 31, 1839; field notes of Warren survey; resurvey plat of township 20 north, range 16 west, approved by the Commissioner of the General Land Office July 24, 1916; supplemental topographic plat of township 20 north, range 16 west, approved March 28, 1917.

There shall also be sent up in the original the illustrative profile marked "Plaintiff's Exhibit F," and the report of L. L. Janes, ecologist.

3. A copy of this stipulation shall be incorporated in each of the records on appeal.

Thus done and signed this August 17, 1921.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

(Signed) J. A. THIGPEN,
S. L. HEROLD,
FOSTER, LOONEY & WILKINSON,
FRANK J. LOONEY,
HAMPDEN STORY,
J. W. WILKINSON,
Attorneys for Appellants and Cross-Appellees.

2 *Clerk's Certificate.*

nited States of America. United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, clerk of the United States Circuit Court Appeals for the Fifth Circuit, do hereby certify that the pages mbered from 67 to 81 next preceding this certificate contain full, ue, and complete copies of all the pleadings, record entries, and oceedings, including the opinion of the United States Circuit Court Appeals for the Fifth Circuit, in a certain cause in said court, mbered 3538, wherein the Southwestern Gas and Electric Com-

pany, Caddo Oil & Gas Company, and Gulf Refining Company of Louisiana, are appellants and cross-appellees, and the United States of America is appellee and cross-appellant, as full, true, and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 66 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

I further certify that the plaintiff's Exhibit F, illustrative profile and the report of L. L. Janes, ecologist, forwarded to this court in the original, are transmitted herewith to the Supreme Court of the United States in the original, as per stipulation of counsel copied at page 79 of this record.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the city of New Orleans, Louisiana, in the Fifth Circuit, this 24th day of August, A. D. 1921.

[SEAL.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

83 THE UNITED STATES OF AMERICA.

The President of the United States to Southwestern Gas and Electric Company, Caddo Oil & Gas Company, and Gulf Refining Company of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a petition and order of appeal, and assignment of errors, sued out and filed in the clerk's office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein the United States of America is appellee and cross-appellant and Southwestern Gas and Electric Company, Caddo Oil & Gas Company, and Gulf Refining Company of Louisiana, are appellants and cross-appellees, said cause bearing the number 3538 on the docket of the United States Circuit Court of Appeals for the Fifth Circuit and being entitled in said court as follows: Southwestern Gas and Electric Company, Caddo Oil & Gas Company, and Gulf Refining Company of Louisiana, appellants and cross-appellees, versus The United States of America, appellee and cross-appellant, to show cause, if any there be, why the decree rendered against the said the United States of America and in said petition and order of appeal, and assignment of errors, mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable William Howard Taft, Chief Justice of the United States, this 15th day of August, in the year of our Lord one thousand nine hundred and twenty-one.

[SEAL.]

R. W. WALKER,
United States Circuit Judge.

Indorsed: Service of the within citation of appeal accepted and acknowledged this 19th day of August, 1921.

J. A. THIGPEN,
S. L. HEROLD,
J. W. WILKINSON,
Attorneys of Record
for Appellants and Cross-Appellees.

No. 3538. United States Circuit Court of Appeals, Fifth Circuit. Southwestern Gas and Electric Company, Caddo Oil & Gas Company, and Gulf Refining Company of Louisiana, appellants and cross-appellees, vs. The United States of America, appellee and cross-appellant. Citation. Filed 20th day of August, 1921. Frank H. Mortimer. Clerk of the United States Circuit Court of Appeals.

(Indorsed on cover: File No. 28457. U. S. Circuit Court Appeals. 5th Circuit. Term No. 502. The United States of America, appellant, vs. Southwestern Gas and Electric Company, Caddo Oil and Gas Company, and Gulf Refining Company of Louisiana. Filed August 31st, 1921. File No. 28457.)

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]

No. [redacted]163

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE GULF REFINING COMPANY OF LOUISIANA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED AUGUST 31, 1931.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 503.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE GULF REFINING COMPANY OF LOUISIANA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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a UNITED STATES OF AMERICA;

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, Circuit Judges:

GULF REFINING COMPANY OF LOUISIANA, APPELLANT,
versus
THE UNITED STATES OF AMERICA, APPELLEE.

and

THE UNITED STATES OF AMERICA, APPELLANT,
versus
J. M. WALLING, NATALIE OIL COMPANY, Crude Oil Company, and Gulf Refining Company of Louisiana, appellees.

Be it remembered, that heretofore, to-wit, on the 25th day of May, A. D. 1920, a transcript of the record in the above-styled cause, pursuant to appeals from the District Court of the United States for the Western District of Louisiana, was filed in the office of the clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3539, as follows, to-wit:

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA,

versus No. 1163 In Equity.

J. M. WALLING, ET AL.

TRANSCRIPT OF APPEAL.

Taken by Defendants and Cross Appeal, Taken by the Plaintiff, to the United States Circuit Court of Appeals, Fifth Circuit, New Orleans, Louisiana.

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1 (BILL OF COMPLAINT.)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION.

UNITED STATES OF AMERICA,

Plaintiff,

versus No. 1163 In Equity.

J. M. WALLING, NATALIE OIL COMPANY, CRUDE OIL COMPANY, GULF REFINING COMPANY OF LOUISIANA,

Defendants.

To the Honorable Judge of the District Court of the United States for the Western District of Louisiana sitting within and for the Shreveport Division.

The United States of America, by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, act-

ing herein under the direction and by the authority of the Attorney General of the United States, brings this bill of complaint against the following defendants:

J. M. Walling, a citizen of Louisiana, and a resident of the Parish of Caddo, in the Western District of Louisiana, Shreveport Division;

Natalie Oil Company, a corporation organized under the laws of Louisiana and domiciled and doing business in the City of Shreveport, in the Western District of said State, Shreveport Division;

Crude Oil Company, a corporation, organized under the laws of the State of Louisiana and domiciled in the City of Shreveport, in the Western District of said State, with J. A. Thigpen as its President and Wheeler Shropshire as its Secretary; and

Gulf Refining Company of Louisiana, a corporation organized under the laws of the State of Louisiana, and domiciled in the City of New Orleans, Eastern District of said State;

And thereupon complains and shows unto your Honor:

I.

That on and before December 15, 1908, the plaintiff was the owner, as a part of its public domain, of certain tract of land, which was then unsurveyed public land of the United States, but which has since been surveyed under the direction and with the approval of the Secretary of the Interior, and is now known and described as Lot Number Seven (7) of Section Ten (10), in Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo,

Western District of Louisiana, containing Twelve
2 and Seventy-two hundredths acres, as shown by plat of survey approved March 28, 1917, by Clay

Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana.

That on and prior to the aforesaid date plaintiff, was and still is, the owner and entitled to the possession of the above described land, and likewise of all oil, petroleum, gas and other minerals therein contained.

II.

On December 15, 1908, in order to conserve the public interests, and in aid of such legislation as might thereafter be proposed, recommended and enacted, the President of the United States, by and through the Secretary of the Interior, and under the legal authority vested in him so to do, duly and regularly withdrew from settlement and entry and from all other forms of appropriation, all of the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, which withdrawal included the lands herein involved.

On the 2nd day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, by executive order, and under special authority conferred by the act of June 25, 1910, entitled "An Act to authorize the President of the United States to make withdrawals of Public lands in certain cases," ratified and confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, above set forth, insofar as it affected the land described herein, including the same as a part of Petroleum Reserve Number Four. That such lands so withdrawn by said order of July 2, 1910, including the land herein involved, were withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been vacated but both are now in full force and effect, and said lands above named, including the property involved herein, ever since the date of the first withdrawal, December 15, 1908, have not been subject to exploration for oil, petroleum, gas, or other minerals, or to location or entry of any kind under the general land laws, or mineral laws, of the United States.

3 III.

Plaintiff avers that notwithstanding said orders of withdrawal, and in violation of the rights of the plaintiff, and contrary to its laws, and without any valid title, lawful right or authority, the defendants herein, in bad faith, entered upon and took possession of the tract particularly described in paragraph I hereof, for the purpose of drilling thereon for oil and gas, and did so drill one well known as Gulf Refining Company's Marshall No. Four, and did withdraw therefrom large quantities of oil and gas, the exact amount and value of which is unknown, all to the great and irreparable injury of plaintiff.

IV.

That on and prior to the dates of the withdrawal orders hereinabove set forth, to-wit; December 15, 1908, and July 2, 1910, none of the said defendants, or any one from whom the defendants, or any of them, claim, was in the possession of said land, or a bona fide occupant thereof in diligent prosecution of work thereon, leading to a discovery of oil or gas, and no such discovery was in fact made prior to said orders of withdrawal, nor until long after said orders were issued, and had become effective to withdraw said land from location, entry and other appropriation.

V.

That no mineral location was in fact made by any of the defendants herein, on the land upon which said well is located, but, plaintiff states, that the said oil and gas were extracted therefrom under the color of a pretended chain of ownership in and to said lands, which claim is a cloud upon plaintiff's title.

Plaintiff avers that the said J. M. Walling, Natalie Oil Company, Crude Oil Company, and the Gulf Refining Company of Louisiana, have no right, title or interest in and to the said tract of land, but, acting under the said pretended claim of ownership, and subsequent to the withdrawal orders hereinabove referred to, the said Gulf Refining Company of Louisiana, and the Crude Oil Company, entered upon the said tract of land, drilled a well thereon, as aforesaid, and took therefrom a large quantity of oil and gas, which they have marketed and sold; that the said Gulf Refining Company of Louisiana, and the Crude Oil Company received the price of the oil and gas so produced, marketed and sold by them, and paid a royalty therefrom to the other defendants herein, the amount of which is to the plaintiff unknown.

4 The exact quantity of oil and gas so produced, withdrawn from the land, marketed and sold, the value thereof, and the price and royalties paid to and received by the defendants herein, being unknown to the plaintiff, full discovery from the said defendants is sought.

VI.

Except as in this bill stated, the Plaintiff has no other knowledge or information concerning the nature of any other claims asserted by the defendants herein, or any of them, and therefore leaves said defendants to set forth their respective claims and interests.

In that behalf plaintiff alleges that the said defendants have not, and never had, any right, title or interest in and to, or lien upon, said land, or any part thereof, or any right, title or interest in and to the petroleum, minerals, oil or gas deposited therein, but, on the contrary, the acts of these defendants who have entered upon the said land and drilled a well thereon, and used and appropriated the petroleum and gas deposited therein, were all in violation of the laws of the United States, and of the rights of plaintiff.

VII.

Plaintiff avers that the defendants are now unlawfully trespassing upon said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

VIII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of Fifty Thousand ($50,000.00) Dollars, and that all of the defendants herein acted in bad faith in the premises.

IX.

In consideration whereof and forasmuch as the plaintiff is without full, adequate and complete remedy in the premises save in a Court of equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That the cloud upon plaintiff's title, created by the pretended claim of ownership of the said defendants be removed, and that any and all deeds, leases or instruments of writing of any kind or nature whatever, upon which said pretended claim of ownership of the defendants is based, insofar as the same may include the property in controversy, in this case, either directly or indirectly, be declared null and void, and to that extent cancelled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendants or any of them, and that the possession of said land may be restored to the plaintiff.

5. That said defendants, during the progress of this cause, and finally and perpetually thereafter, may be enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon the plaintiff's title to the same or to any of the oil, gas or minerals on or under the same, and from going upon said land, or

in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of boring and extracting, storing and transporting oil, or gas, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

8. That plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please the Court that writs of subpoena issue directed to J. M. Walling, Natalie Oil Company, and Crude Oil Company, defendants herein, commanding them at a certain time and under a certain penalty therein to be named, to appear before this honorable Court and then and

there full, true and direct answers make to all and singular the premises, and to stand to perform and abide by such order, direction and decree as may be made against them in the premises, and as shall be meet and agreeable to equity.

And may it further please the Court, that an order be granted and entered, directed to the Gulf Refining Company of Louisiana, not an inhabitant of, or now within, this District, and served as provided by law, directing said defendants to appear and answer in this cause on a day certain to be designated by this Court.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

7 AFFIDAVIT.

United States of America,
Northern District of California.

D. R. THOMPSON, being first duly sworn, deposes and says:

That he is Mineral Inspector of the General Land Office, and as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location and all forms of appropriation by order of December 15, 1908, and July 2, 1910; and that from the examination of such lands, and from examination of the records of the General Land Office and of the local Land Office in the State of Louisiana, he has knowledge

of the facts set forth in the foregoing bill of complaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 28th day of July, 1917.

C. W. CALHEATT,
Deputy Clerk U. S. District Court Northern District of California. (Seal)

8 ORDER.

The above and foregoing bill of complaint and affidavit being considered, and it appearing to the Court that the Gulf Refining Company of Louisiana, defendant, is not an inhabitant of the Western District of Louisiana, and is domiciled outside of said District.

It is therefore, ordered that the said absent defendant be, and it is hereby, directed to appear and answer to the above and foregoing bill of complaint at Shreveport, in the Western District of Louisiana, on the 15 day of Sept. 1917, at the hour of ten o'clock A. M., and that service of duly certified copies of the said bill of complaint and of this order be made on said defendants, wherever found.

Thus done and signed this 2 day of Aug. 1917.

GEO. WHITFIELD JACK.
(Seal) United States Judge.

Indorsed: Bill of complaint. Filed Aug. 2, 1917.

9 (ANSWER GULF REFINING CO. & NATALIE OIL CO. TO BILL OF COMPLAINT).

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,
Plaintiff,
vs. No. 1163 In Equity.
J. M. Walling, Natalie Oil Company, Crude Oil Company, Gulf Refining Company of Louisiana,
Defendants.

The answer of the Gulf Refining Company of Louisiana and Natalie Oil Company, defendants in the above entitled and numbered cause; the Natalie Oil Company appearing through its liquidators, J. A. Thigpen and S. L. Herold, said corporation having been dissolved.

And now comes the said defendants and for answer to the bill of complaint herein filed says:

I.

Defendants deny that on December 15th, 1908, plaintiff was the owner of the tract of land which is described in its bill by the pretended description of Lot number Seven (7), Section Ten (10), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, situated in the Parish of Caddo, Western District of Louisiana, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office, and Ex-Officio Surveyor General for the State of Louisiana. And defendant shows that there is not and never has been such a tract of land as Lot Number Seven (7), Section Ten(10), Township Twenty (20) North, Range

Sixteen (16) West, Louisiana Meridian, and that the purported survey showing such lot is illegal, null and void and the execution and approval thereof beyond the power, jurisdiction or authority of the General Land Office of the United States, for the reasons that the said tract of land was not at the date of said survey in the ownership of the United States but was in private ownership as hereinafter more fully appears.

Defendants, therefore, further deny that plaintiff was or is the owner or entitled to the possession of the land or of any of the minerals therein contained.

10 II.

Defendants show that none of the allegations of Article II of the Bill of Complaint are pertinent or relevant to any of the issues involved in this cause, and that the same call for neither affirmation nor denial; and defendants, therefore, move that so much of the bill of complaint as is contained in said Article II be dismissed; but under reservation of its rights, defendants show that said land was not and could not have been included in any withdrawal order, because it was not at any of the dates referred to, the property of the United States.

III.

Defendants deny that they entered upon or took possession of the property herein involved in violation of any of the rights of the plaintiff or contrary to its laws, or without any valid title, law right or authority, or in bad faith, but they aver that lawfully and under a valid title they are in possession of said property, and that defendant Gulf Refining Company of Louisiana, jointly with the Crude Oil Company (formerly a corporation but now

long since dissolved and liquidated), drilled thereon a well known as "Gulf Refining Company's Marshall No. Four," from which it produced some oil, the amount and value of which is set out further in this answer.

IV.

Defendants say that none of the allegations of the Fourth Article of the Bill of Complaint are material, relevant or pertinent to the issues of this case, for the reason that the said property is not nor was it at any of the dates referred to the property of the United States; and that they do not claim the property under any discovery under the mining laws of the United States but under a valid title long antedating the withdrawal orders referred to, as hereinafter is fully set out.

V.

Defendants admit that no mineral location was made of the land whereon said well is located. But defendants show that said land was not at the date said well was drilled, the property of the United States, but was at such date in the sole and perfect ownership of the Gulf Refining Company of Louisiana and the Crude Oil Company; and, therefore, deny that their claim of ownership was a pretended one or that plaintiff had or has any interest in said land.

And defendants show that the well in question
11 is located in Lot Five (5) or the Southeast fractional quarter of Section Ten (10), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, as per plat of survey by A. W. Warren, United States Deputy Surveyor, approved on the 31st day of August, 1839, and on file in the General Land Office of

the United States; and that on the third day of July, 1897, a patent was issued by the United States to Thaddeus W. Marshall, conveying to said Marshall the full and complete title to all of said fractional Southeast quarter or Lot Five (5) of said Section Ten (10), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, according to aforesaid plat and field notes of such survey by A. W. Warren, Deputy Surveyor; which said plat and field notes showed said tract to be bounded by the mean high water of Ferry Lake, a navigable body of water, and which said patent, accordingly, under the laws of the United States, evidenced the transfer by the United States to said Marshall of the full, complete and perfect title to all of said tract of land as so bounded by the waters of Ferry Lake. And defendants show that the pretended Lot Seven (7) of said section as referred to in the bill of complaint is part of said fractional Southeast quarter of Lot Five (5) of said section, conveyed by said patent to said Marshall as aforesaid, and that it represents an unauthorized, illegal and void attempt by the General Land Office of the United States to survey as public land, property in private ownership, by arbitrarily and illegally claiming the meander line of the lake to be the boundary of defendants' property and to take from defendants in violation of their rights as holding under said patent to Marshall all that portion of said tract not embraced within the calls of such meander line; which was not run as the boundary of such subdivision but merely to denote the general contour of the lake front thereof.

Defendants show that after the death of the said Marshall, the said property was sold by his heirs and through mesne conveyances, as appears from acts of sale recorded in the conveyance records of Caddo Parish, Louisiana, certified copies of which will be produced upon the trial hereof, the entire property came to be vested in the Gulf

Refining Company of Louisiana and in the Crude Oil Company; and that the interest of the Crude Oil Company was subsequently, to-wit on January 14th, 1916, acquired by the said Gulf Refining Company of Louisiana, as fully appears from records in Conveyance Book 105, page 183, of the records of Caddo Parish, Louisiana.

12 Under the said acts of sale above referred to, certain provisions were made for the payment of royalties of the oil produced from the property, to various persons, which obligations have been complied with.

VI.

Defendants deny that plaintiff has no knowledge or information concerning their title, and especially deny that they are without any right, title or interest in said property, or that their acts in entering upon said land and drilling thereon and extracting oil and gas therefrom are in violation of the laws of the United States or of any of the rights of plaintiff. But in this connection, defendants show that having title, deraigning from Thaddeus W. Marshall, to whom patent issued to all of the fractional Southeast quarter or Lot Five (5) of Section Ten (10), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, as aforesaid, they are entitled to the possession of all of said property which, as aforesaid, is bounded on the front by the ordinary high water mark of Ferry Lake and not by any arbitrary line.

VII.

Defendants deny that they are unlawfully trespassing upon said land or asserting any unlawful claim thereto, but say that their possession of same is valid and lawful; and they deny that plaintiff has any interest in the said property.

VIII.

Defendants deny that they or either of them acted in bad faith in the premises, but aver their good faith in all the acts and dealings aforesaid.

IX.

For further answer defendants show that in its operation upon said property the Gulf Refining Company of Louisiana extracted therefrom a quantity of oil, which it disposed of, after first delivering to the parties interested in the same their proportions provided in the various contracts under which defendant Gulf Refining Company of Louisiana holds possession of said property.

The amount of said oil produced and sold up to July 31st, 1917, by the said Gulf Refining Company of Louisiana, for its own account was twenty thousand three hundred and sixteen & 58/100 (20,316.58) barrels of the market value of Twenty Thousand Six Hundred and fifty & 63/100 Dollars ($20,650.63); after having delivered
13 to the Natalie Oil Company one thousand two hundred and seventy & 41/100 (1,270.41) barrels of oil of the market value of One Thousand Four Hundred and Eighty-five & 95/100 ($1,485.95) Dollars and to the Crude Oil Company nine thousand four hundred and sixty eight & 29/100 (9,468.29) barrels of oil of the market value of Eight Thousand Seven Hundred and Eight & 25/100 ($8,708.25) Dollars.

All of the acts of said defendants in drilling on the said property, producing oil and selling the same was done in good faith and under a just title.

X.

And now defendants show that the Gulf Refining Company of Louisiana took possession of said land in good

faith under a lease from one whom it believed and had the right to believe lawfully entitled to possession thereof and to minerals therein contained, with the full and exclusive right to drill upon and operate said property for the production of oil, gas and other minerals therefrom, and that said well was drilled in good faith and under such belief or right.

And defendant Gulf Refining Company of Louisiana shows that in the event the Court should hold that plaintiff is the owner of said land, that this defendant is entitled to be reimbursed the entire cost of drilling, equipping and operating said well before it can be held liable, if any such liability there be, for any oil extracted therefrom.

And defendant shows that the actual cost of the drilling of said well, known as "Marshall No. Four", was eleven Thousand Three Hundred and Thirty-one & 64/100 ($11,331.64) Dollars, and that the cost to the defendant Gulf Refining Company of Louisiana of the operation of said well to July 31st, 1917, was seven Thousand Nine Hundred and Forty-one & 7/100 ($7,941.07); making a total expense to defendant of Nineteen Thousand Two Hundred and Seventy-two & 71/100 ($19,272.71) Dollars in the production of such oil.

Wherefore, having made full and complete answer to all the allegations of the aforesaid bill of complaint, defendants pray that said bill be dismissed with all costs in this behalf sustained.

In the alternative, that is in the event plaintiff should be adjudged the owner of said property and entitled to an accounting for the oil extracted therefrom,
14 then defendants pray that said Gulf Refining Company of Louisiana may be adjudged not liable to the plaintiff on such account until said plaintiff have first repaid and reimbursed defendant the entire

cost of drilling and equipping said well and of the operation thereof up to date of final settlement; and that if this relief be refused, then that all such expenditures and outlays by said defendant in the production of such oil be held and adjudged by this Court to be offsets on said account in favor of said Gulf Refining Company of Louisiana and against plaintiff.

And defendants pray for all orders and decrees necessary or proper in premises and for general relief.

D. EDWARD GREER,
THIGPEN & HEROLD,
Solicitors for Defendants.

Indorsed: Answer. Filed Sep. 29, 1917.

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15 (PLAINTIFF'S REPLY TO DEFENDANT'S SET OFF & COUNTER CLAIM).

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,
Plaintiff,
vs. No. 1163 In Equity.

J. M. Walling, Natalie Oil Company, Crude Oil Company, Gulf Refining Company of Louisiana,
Defendants.

I.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled

cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and for reply to the set off and counterclaim asserted by defendants in their answer filed in the above numbered and entitled cause, shows:

II.

That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.

III.

Plaintiff denies all the allegations of the said answer relating to said set off and counterclaim, and, particularly, paragraph 10 and the prayer of said answer.

IV.

Plaintiff shows that the said defendants are not entitled to any set off, or counterclaim, whatsoever in the premises.

V.

Further replying, plaintiff avers that the said defendants entered upon the land described in the bill of complaint, and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendants were wilful and knowing trespassers upon said land.

VI.

Plaintiff further shows, in the alternative, that even if the said defendants are entitled to a set off, or counterclaim in any amount, which is denied, the sum
16 claimed by the defendants is excessive and should not be allowed.

VII.

Wherefore, plaintiff prays that the set off and counter claim asserted by the defendants be denied and disallowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed: No. 1163, In Equity. United States of America, Plaintiff, vs. J. M. Walling, et als, Defendants. District Court of the United States, Western District of Louisiana. Plaintiff's reply to Defendant's set off and Counterclaim. Filed Oct. 5, 1917. W. B. Lee, Clerk U. S. District Court, West. Dist. of Louisiana.
B.

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17 (INTERROGATORIES PROPOUNDED BY PLAINTIFF TO THE GULF REFINING CO. OF LOUISIANA.)

(1).

In your answer to the bill of complaint herein, it is stated that the Gulf Refining Company of Louisiana drilled the well known as Marshall No. 4, State when said well was commenced and when completed.

(2).

In your answer it is further stated that the production to July 1, 1917, of oil from the land in controversy, was 20,316 58 barrels, of the value of $20,650.63. State whether or not the production of said well as given in your said answer is exact, or estimative.

(3).

State the total production of oil from the said well, (a) up to July 1st, or July 31, 1917, and (b) from July 1st, or 31, 1917, to January 1, 1918.

(4).

State whether or not the said well was operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

(5).

Was a separate and complete record kept by the Gulf Refining Company of Louisiana of the oil produced by said well? If so, state how, and in what manner said record was kept.

(6).

If the production as given by you in your answer to the bill of complaint and in your answers to the preceding interrogatories is based upon an estimate of the quantity of oil produced by well in suit, in connection with other wells not in suit, or if you have stated that said production is estimative, and not exact, then state (a) the total production of all wells operated in conjunction with the well in suit, naming and giving the location of such other wells, and (b) the manner in which you arrived at, or figured the production of the well in suit.

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(7).

Is it, or not, a fact that you have estimated in your answer to the bill of complaint and in your answer to the

preceding interrogatories, the production of the well in suit known as Marshall No. 4 and that your estimate of the production of said well is based upon the amount of oil produced by it in connection with other wells? If so, state where such other wells are located, and say whether or not they were operated in conjunction with the well known as Marshall No. 4.

(8).

Is it not a fact that the total production of oil to April 1, 1916, from wells drilled and operated by you on property, known as the Marshall land, being fractional SE¼ or Lot 5 of Sec. 10, T. 20, N. R. 16 W., acquired from the heirs of Thaddeus W. Marshall, including the well in suit, was 415,644.71 barrels?

(9).

State how much oil was produced from the wells referred to in the preceding interrogatory, from April 1, 1916, to the date of filing your answer to the bill of complaint herein, and say whether or not you have credited Marshall No. 4 with only approximately one-twentieth of the total production of said wells.

(10).

State whether the production of Marshall No. 4 was kept separately from any other well or wells that may have been operated in connection with it. If such a record was kept, please attach a copy thereof to your answer to these interrogatories. If such a record was not kept, state how you arrived at, or ascertained the production of such well.

(11).

Give the names and addresses of the preson, or persons, who furnished the data or information set forth in your answer to the bill of complaint herein relative to the production of the well in suit.

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(12).

State the total market value of the oil produced by the Gulf Refining Company of Louisiana from the land in controversy and say whether or not the value as given by you in your answer is exact or approximate, and, furthermore, state upon what the value as given is based.

(13).

State whether or not the Gulf Refining Company of Louisiana is engaged, and was engaged at the time said well as drilled and operated, in the manufacture and sale, as well as the production of oil, and also state whether the oil produced by it, from the land in controversy, was sold to other persons, or corporations, or was manufactured by it into products of oil.

(14).

What are the principal products manufactured from petroleum or crude oil?

(15).

State the total value, either exactly if you know, or approximately if you do not know exactly, of the products manufactured by the Gulf Refining Company of Louisiana, from the oil extracted from the land in controversy.

(16).

State the total profits made by the Gulf Refining Company of Louisiana (a) from the sale of any or all of the crude oil extracted from the land in controversy, and, (b) the profits made by it from the manufacture and sale of the products of said crude oil.

(17).

If any of the crude oil extracted from the land in suit by the Gulf Refining Company of Louisiana was sold to any other Company or person, state where and in what manner delivery thereof was made.

(18).

How much money was paid as royalties by the Gulf Refining Company of Louisiana to the other defendants herein, out of the proceeds of the sale of oil taken from the land in controversy, and state the amount of such royalties which the said Gulf Refining Company of Louisiana is now holding, pending the result of this suit, and the names of the persons for whose account said royalties are held.

ROBERT A. HUNTER,
Special Assistant to Attorney General.

Indorsed: Application & Order to file interrogatories, & interrogatories to be answered by the Gulf Refining Company of Louisiana. Filed Feb. 2. 1918.

21 (ANSWER OF GULF REFINING CO. TO INTERROGATORIES).

In the District Court of the United States for the Western District of Louisiana.

United States of America, Complainant,
vs. No. 1163 In Equity.
J. M. Walling, et al., Defendants.

In the above entitled and numbered suit, now comes the Gulf Refining Company of Louisiana, through C. R. Minor, its third vice-president, a proper officer of the said corporation for the answering of interrogatories to it herein, and answers said interrogatories, under oath, as follows, to-wit:

To Interrogatory No. 2, defendant answers:

Marshall No. 4 was commenced December 1st, 1911, and was completed January 31st, 1912.

To Interrogatory No. 2, defendant answers:

Said 20,316.58 barrels of oil is the estimated number of barrels of oil taken from the land in controversy, for account of the Gulf Refining Company of Louisiana, and not the total production of said well; the total estimated production from said well up to August 1st, 1917, being 42,356.49 barrels, of the value of $40,261.19.

To Interrogatory No. 3, defendant answers:

(a) The total production of oil from the said well up to August 1st, 1917, was 42,356.49 barrels, of the value of $40,261.19;

(b) From August 1st, 1917, to January 1st, 1918, 626.56 barrels, of the value of $1,238.03.

To Interrogatory No. 4, defendant answers:

Said well was operated in the production of oil in connection with four other wells on same tract of land.

To Interrogatory No. 5, defendant answers:

No; estimated monthly production was taken of said well.

To Interrogatory No. 6, defendant answers:

(a) The total production from said five wells up to January 1st, 1918, was 461,312.63 barrels; said wells, Marshall Nos. 1 to 5, inclusive, being all located in the fractional southeast quarter of Section 10, Township 20 North, Range 16 West.

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(b) Production is gauged by gaugers in the field from each individual well, every month, in order to arrive at the production of each well relative to the total quantity of oil produced from all the wells, and it is from this gauging that the estimate is made up showing the production of each individual well. It was in this manner that the production of the well in suit was arrived at.

To Interrogatory No. 7, defendant answers:

Yes, Marshall Wells Nos. 1, 2, 3 and 5 are all located in the fractional southeast quarter of Section 10, Township 20, North, Range 16 West, as aforesaid, and were operated in conjunction with the well known as Marshall No. 4, also located in the same subdivision.

To Interrogatory No. 8, defendant answers:

Total production to April 1st, 1916, of said five wells was 415,394.25 barrels.

To Interrogatory No. 9, defendant answers:

The total production from April 1st, 1916, to August 1st, 1917, of said five wells was 42,906.09 barrels. The amount credited to Marshall No. 4 (ascertained from the estimated monthly production, as aforesaid) was approximately one-tenth of the total production of said five wells; the amount run by the Gulf Refining Company of Louisiana for its own account being approximately one-twentieth of said total production of said five wells.

To Interrogatory No. 10, defendant answers:

No separate record kept; production estimated in the manner as aforesaid.

To Interrogatory No. 11, defendant answers:

L. E. Delcuze, Auditor of the Gulf Refining Company of Louisiana, Gulf Pipe Line Company Building, Houston, Texas.

23 To Interrogatory No. 12, defendant answers:

The total market value of the oil produced by the Gulf Refining Company of Louisiana from the well in controversy, up to January 1st, 1918, was $41,499.61. The value is approximated to this extent; it is based on the estimated production of 42,983.05 barrels of oil, at posted pipe line prices at the date of the purchase of the oil,

same being at prevailing price of oil in the field at such date.

To Interrogatory No. 13, defendant answers:

The Gulf Refining Company of Louisiana is not now, nor was it at the time the well was drilled and operated, engaged in the manufacture of products of oil; the oil produced by it was sold to the Gulf Pipe Line Company.

To Interrogatory No. 14. defendant answers:

Gasoline, kerosene and lubricating oils.

To Interrogatory No. 15. defendant answers:

The Gulf Refining Company of Louisiana never at any time manufactured any product from the oil extracted from the well in controversy.

To Interrogatory No. 16, defendant answers:

(a) The Gulf Refining Company of Louisiana made no profit from the sale of any or all of the crude oil extracted from the well in controversy, outside of the profit made by it in its drilling operations—the value of the oil at the mouth of the well less the cost of drilling, equipment and operations.

The cost of equipping, drilling and operating said well, up to January first, 1918, was $20,643.19;

The amount of oil extracted therefrom up to said date and sold for account of this defendant was 20,866.07 barrels of the value of $21,734.25;

Which was sold by this defendant for that price to the Gulf Pipe Line Company plus a reasonable pipage charge of ten cents per barrel, or $2,173.42. As to this pipage charge, defendant is unable to say whether or not any portion of same represents a profit, for the reason that it has no date from which it could say whether the charge of ten cents represents a profit on the carriage
24 of the oil, after reasonable allowance for depreciation and obsolescence of pipe line. If no profit be allowed on account of this pipage charge, the total profits made by the Gulf Refining Company of Louisiana was $1,091.06.

(b) The Gulf Refining Company of Louisiana never at any time manufactured any product from the oil extracted from the land in controversy.

To Interrogatory No. 17, defendant answers:

The Crude oil extracted from the well in suit by the Gulf Refining Company of Louisiana was sold to the Gulf Pipe Line Company, a corporation organized and existing under the laws of the State of Texas; delivery thereof being made from the pipe lines of the Gulf Refining Company of Louisiana to the pipe lines of the Gulf Pipe Line Company, at the receiving station of the latter Company in the State of Texas.

To Interrogatory No. 18, defendant answers:

The Gulf Refining Company of Louisiana does not pay money as royalties; under its contract with its lessors, it delivers oil to their credit in tank or pipe lines. In this particular case, the Gulf Refining Company of Louisiana purchased from its lessors the royalty oil and paid

them therefor. The amount of royalties so delivered in oil and the value of the oil so purchased by the Gulf Refining Company of Louisiana from its lessors was as follows:

	Bbls.	Value.
H. L. Heilperin,	1,998.53	1,753.37
Natalie Oil Company	807.58	1,013.83
J. A. Thigpen and S. L. Herold	173.32	337.68
	2,979.43	3,104.88

No royalties are being held up.

C. R. MINOR.

Sworn to and subscribed before me on this the 15th day of April, 1918.

(Seal) J. A. THIGPEN,
Notary Public in and for Caddo Parish, Louisiana.

25 Indorsed:—Answer of Gulf Refining Company of Louisiana to Interrogatories. Filed Apr. 20, 1918.

26 (APPLICATION AND ORDER TO FILE ADDITIONAL INTERROGATORIES AND INTERROGATORIES TO GULF REFINING CO. OF LA).

In the District Court of the United States, for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,

vs. No. 1163 In Equity.

J. M. Walling, Natalie Oil Company, Crude Oil Company, Gulf Refining Company of Louisiana, Defendants.

To the Honorable Rufus E. Foster, United States Judge, in and for the Western District of Louisiana:

Now into this Honorable Court comes the United States of America, appearing herein through Robert A. Hunter, Special Assistant to the Attorney General, and with respect represents:

That plaintiff files herewith additional interrogatories in writing for the discovery by the Gulf Refining Company of Louisiana, one of the defendants, of facts and documents material to the support of plaintiff's cause.

Wherefore, plaintiff prays for an order allowing the filing of said additional interrogatories; that service hereof be made upon said defendant, and that it be required to answer said interrogatories separately, fully and in writing and under oath, within fifteen days after service thereof, all as provided by Rule 58 of the Equity Rules.

Plaintiff prays for all orders necessary in the premises and for general relief.

ROBERT A. HUNTER,
Special Assistant to the
Attorney General.

ORDER.

The foregoing application being considered, it is ordered that plaintiff be, and is hereby allowed to file the annexed interrogatories, and that said interrogatories shall be answered within fifteen days after they have been served, and shall be answered separately and fully and the answers shall be in writing under oath, and signed by the party interrogated.

27 It is further ordered that the interrogatories addressed to the Gulf Refining Company of Louisiana shall be answered by it through its proper officer, or employee, who has knowledge of the facts inquired about.

It is further ordered that service of said interrogatories be made in the manner provided by Rule 58 of the Equity Rules.

Thus done and signed this 31 day of May, 1918.

RUFUS E. FOSTER,
United States Judge.

1.

In your answers to the original interrogatories propounded to you herein, it is stated that the production of the well in suit is estimative and in your answer to the sixth interrogatory you stated that the

"production is gauged by gaugers in the field from each individual well, every month, in order to arrive at the production of each well relative to the total quantity of oil produced from all the wells, and it is from this gaug-

ing that the estimate is made up, showing the production of each individual well. It was in this manner that the production of the well in suit was arrived at."

State whether or not, there are in your possession, or in existence, any records of the production of the wells, known as Marshall No. 1 to 5, inclusive, referred to in your answers to previous interrogatories as gauged in the manner set forth in your answer to the sixth interrogatory hereinabove set forth.

2.

State whether or not any record of said production as gauged by gaugers in the field, as set forth in your answer to the sixth interrogatory, was kept at the time by said Company, or any of its representatives, and if so, state where said records are now, and in what form they were kept.

3.

Is your estimate of the production of the well in suit based upon any record of any kind now existing? If so, upon what record is such estimate based, and where is such record?

4.

Describe in detail the records of said production which you state was made by gaugers in the field from each individual well every month, and if any such records are in existence, please attach to your answers to these interrogatories copies of such original records.

28 If any record whatever was kept of said production for the basis of an estimate, as set forth in your answer to the sixth interrogatory, is it not a fact that said records have been destroyed? If your answer is, "yes", state why and when such records were destroyed.

5.

Is it not a fact that the estimate of the production made in your answers to the interrogatories heretofore propounded, is not based upon any record, or memorandum of any kind whatever, insofar as the production of the well in suit is concerned?

6.

State who made the estimate of the production of the well in suit giving the name and address of the person who made such estimate.

ROBERT A. HUNTER,
Special Assistant to the
Attorney General.

Indorsed:—Application and Order for Filing Additional Interrogatories and Interrogatories to be Answered by the Gulf Refining Company of Louisiana. Recorded in Chancery Order Book, Vol. 5, Folio 463. Filed June 3, 1918.

29 (ANSWER GULF REFINING CO. TO ADDITIONAL INTERROGATORIES).

In the District Court of the United States for the Western District of Louisiana.

United States of America, Complainant,
vs. No. 1163 In Equity.
J. M. Walling, et al., Defendants.

In the above entitled and numbered suit, now comes the Gulf Refining Company of Louisiana, through C. R. Minor, its third vice-president, a proper officer of the said corporation for the answering of interrogatories to it herein, and answers the additional interrogatories filed herein, under oath, as follows:

To Interrogatory No. 1, defendant answers:

Pumpers or gaugers in the oil field, employed by the Company for that purpose, turn in memoranda showing the estimated production of each individual well, and from this data monthly statements are compiled showing the estimated average production of each well. These memoranda are in pencil and no permanent record of same is kept.

To Interrogatory No. 2, defendant answers:

Estimates of the production of each individual well furnished by the pumpers or gaugers are kept until monthly statements are compiled from them, and the only record kept of the data furnished by said pumpers and gaugers is in the form of said monthly statements, which are compiled by the clerks in the office of the Superintendent

of the Gulf Refining Company of Louisiana, Shreveport, Louisiana, and a copy of said statement furnished the Houston Office of the Company, where a complete record is kept of all production.

To Interrogatory No. 3, defendant answers:

Estimate of the production of the well in suit is based upon information furnished by said pumpers or gaugers, as shown by said monthly statements, a complete record of which said statements is kept in the Houston Office of said Company; but no permanent record is kept of the data furnished by the said pumpers or gaugers upon which said monthly statement is based.

30 To Interrogatory No. 4, defendant answers:

When two or more wells are pumping in to the same tank, the Company endeavors some time during each month to have a separate gauge made of the production of each well in the group for a twenty-four hour period. Or, if it is not possible to get a gauge for the full twenty-four hours, a gauge is taken for as many hours as can be had; and upon such gauge the production of each individual well is estimated for said 24-hour period and from this data is compiled said monthly statement, showing estimated average production of each well during the monthly period, as aforesaid.

The only record of said production is said monthly statements showing the estimated average production, the memoranda furnished by the said pumpers or gaugers upon which said statement is based being destroyed after said statement is compiled, as they have then served their purpose and are of no further use or benefit to the Company.

To Interrogatory No. 5, defendant answers:

No, this is not a fact. Said record is based upon data furnished by said pumpers or gaugers in the form of pencil memoranda, which memoranda, after same has been used in compiling monthly statement showing average production of each well, are destroyed, being then of no further use or benefit to the Company.

To Interrogatory No. 6, defendant answers:

The names and addresses of the various pumpers who have worked on this property and who have furnished data from which said monthly statements were compiled are not available. The compiling of monthly statements from data supplied by the said pumpers has been handled by the clerks in the office of the Superintendent of Production. Since 1916, Mr. D. K. Buchanan, Chief Clerk in said office, Shreveport, Louisiana, has been compiling such statements.

C. R. MINOR.

Sworn to and subscribed before me on this the 6th day of June, 1916.

(Seal)

J. A. THIGPEN,
Notary Public in and for Caddo Parish, Louisiana.

Indorsed:—Answer of Gulf Refining Company of Louisiana to Additional Interrogatories.

31 (ORDER APPOINTING SPECIAL MASTER).

United States District Court, Western District of Louisiana.

United States,

vs. No 1163.

J. M. Walling, et al.

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court and economize its time, and for the purpose of expediting the final hearing of said cause, the Court of its own motion appoints Edward H. Randolph, Esq., Special Master.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court or elsewhere as may be advisable.

RUFUS E. FOSTER, Judge.

March 29, 1918.

Filed Mar. 29, 1918.

32 759046 4-205r.

B Department of the Interior,
R. General Land Office,

Washington, Jan. 31, 1918.

I hereby certify that the annexed copy of patent is a true and literal exemplification from the record which is in my custody in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

L. T. C. LAMAR,
(Seal) Recorder of the General Land Office.

(DEFENDANT'S EX. NO. 21).

4-772 225.

The United States of America.

Homestead Certificate No. 2789,
Application No. 6385.

To all to whom these presents shall come, Greeting:

Whereas, there has been deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Natchitoches, Louisiana, whereby it appear that pursuant to the Act of Congress approved 20th May, 1862, "To secure Homesteads to actual settlers on the public domain", and the acts supplemental thereto, the claim of Thaddeus W. Marshall has been estab-

lished and duly consummated in conformity to law for the West half of the North East quarter and the Lot numbered five of Section ten in Township Twenty North of Range Sixteen West of Louisiana Meridian in Louisiana, containing one hundred and three acres, according to the Official Plat of the Survey of the said Land returned to the General Land Office by the Surveyor General.

Now know ye, that there is therefore granted by the United States unto the said Thaddeus W. Marshall the tract of land above described: To have and to hold the said tract of land, with the appurtenances thereof, unto the said Thaddeus W. Marshall and to his heirs and assigns forever.

33

In testimony whereof, I, William McKinley, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the third day of July, in the year of Our Lord one thousand eight hundred and ninety-seven and of the Independence of the United States the one hundred and twenty-first.

By the President: WILLIAM McKINLEY,
By F. M. McKEAN, Secy.
L. S. C. H. BRUSH, Recorder of the General Land Office.

759046.

No. 1163. No. 21 Deft. Filed Jan. 21, 1919.

34 4-207.

DMG * "FS" Department of the Interior,
"B" General Land Office,
CRGO Washington, D. C.

January 16, 1918.

I hereby certify that the annexed extract copy of Louisiana tract book, so far as it shows section 10, T. 20 N., R. 16 W., Louisiana Meridian, is a true and literal exemplification from the tract book on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal) D. K. PARROTT,
Acting Assistant Commissioner of the General Land Office.

No. 1163. J. M. Walling. Plaintiff H. Filed Jan. 21, 1919.

35 4-600.

Description of Tract.

(Offered at Sale on the 27th Jany., 1840).

Township No. 20 N., Range No. 16 W., District of Natchitoches.

Tp. withdrawn from all disposal, by Secy., Dec. 15, 1908. See "A" to R. & R. Natch: Dec. 15, 1908, Petroleum Reserve No. 4. Ex Order July 2, 1910, Letter "N", July 16, 1916—54239.

Resurvey (or Restoration survey), Plat approved July 24, 1916, (no areas shown, original plat governs).

Suppl. Plats (sheets 1 and 2) of part of Tp. approved March 28, 1917, received in local office, Baton Rouge.

Section—Township—Range—Contents, Acres 100ths—Rate per acre—Dollars, cts.—Purchase Money, Dollars, Cts.—Name of Purchase—Date of Sale—No of Receipt and Certificate of Purchase—To Whom Patented—Date of Patent.

Apr. 14, 1917; 745008.

NE qr. 160; 10; 20; 16.

NW frl. or Lots 1, 2 and 3; 10; 20; 16; 289.88; 127.24; 10.00; Sallie Curtis; Jan. 22, 1895; 6077; Amended to NW. frl. ¼ or Lots 1, 2, 3, 1896—S4764 F. C. 3758, Feb. 5/01.

NW. fr. qr. 51.00; 10; 20; 16; Sol. by State as swamp, Act 1849— on Aug. 18, 1871; List 12 (Posted June 1, 1897) Rejected Mch. 10, 1899, by letter "K."

Lot 6—31.67.

W½ NE¼ and Lot 5; 10; 20; 16; 103; 10—Thadius W. Marshall, Jan. 13, 1896—6385. E½ SW¼ OR SW frl. and Canc'd Reg. Rec. August 3, 1896. Amended to W½ NE¼ and Lot 5. '96. 116357 Apl. 31, 1897—F. C. 2789.

Lot 7—12.72.

SE. fr. qr. 2300 SE 4; 10; 20; 16; Allow no disposition of this tract—See "C" July 11/91.

Lot 8—40.20.

Lot 9—38.82.

Hd. E½ NE¼; 10; 20; 16; See sec. 11. No. 6754.

Lot 10—6.20 SW fr. qr. 55.88 SW. frl. ¼; 10; 20; 16; 23.00; 1.25; 28.75; Stephen D. Pitts; 1860 April 2d, 16563—16563.

NE. 160 acres Plat May 29/96.
Lot 1—48 acres Plat NW 4 NW 4.
Lot 2—28.24 acres or SW. NW. 4.
Lot 3—51 acres or E2 NW 4.
55.88 acres or SW. frl.
SE frl.

36 PLAINTIFF'S EXHIBIT "M."

(No. 1164).

Gulf Refining Company of Louisiana.

Statement of Pipe Line Runs from Marshall Wells 1 to 5 From January, 1912, When Well No. 4 Began to Produce, to December 31, 1917.

1912	Barrels	Price	Value
January	12,992.85	.67543	8,541.92
February	9,620.12	.71778	6,905.18
March	7,162.81	.72c.	5,157.22
April	12,050.23	.73920	8,907.57
May	13,461.34	.75915	10,219.21
June	13,213.25	.77c.	10,174.20
July	12,417.27	.78559	9,754.93
August	11,002.49	.80c.	8,801.99
September	10,633.98	.80c.	8,507.18
October	10,566.67	.80c.	8,453.34
November	10,325.38	.82442	8,512.46
December	11,214.84	.87958	9,864.29
	134,661.23		103,799.49

1913			
January	10,689.44	.93	9,941.18
February	10,236.47	.98	10,031.74
March	10,671.95	.98	10,458.51
April	9,900.48	.98	9,702.47
May	9,554.63	.98	9,363.54
June	7,541.58	.98	7,420.15
July	8,254.98	.99502	8,213.83
August	7,548.75	1.01787	7,683.65
September	6,960.58	1.05	7,308.61
October	6,894.81	1.05	7,239.55
November	6,511.20	1.05	6,836.76
December	6,711.83	1.05	7,047.42
1914			
January	6,301.85	1.05	6,616.94
February	5,650.45	1.05	5,932.97
March	5,892.20	1.05	6,186.81
April	5,918.26	1.05	6,214.17
May	3,951.77	1.05	4,149.36
June	4,583.70	1.05	4,812.89
July	4,946.18	1.00825	4,987.01
August	5,049.55	.92814	4,686.70
September	5,182.21	.80	4,145.77
October	5,481.96	.80	4,385.57
November	5,138.44	.80	4,110.75
December	5,197.76	.80	4,158.21
1915			
January	4,789.92	.80c.	3,831.94
February	4,222.06	.76425	3,226.69
March	4,639.54	.66875	3,102.73
April	4,459.13	.60c.	2,675.48
May	4,080.64	.60c.	2,448.38
June	4,570.40	.60c.	2,742.24
	191,562.72		179,662.02

1915			
July	4,332.17	.60c.	2,599.30
August	3,884.28	.66873	2,369.65
September	3,890.63	.69465	2,702.61
October	4,574.86	.79573	3,640.21
November	4,083.49	.93182	3,805.09
December	3,310.58	1.07730	3,566.48
To January 14th, 1916	1,731.01	1.20	2,077.21
	25,806.82		20,760.55

37 (Pltff. Ex. M, Page 2).

	Barrels	Price	Value.
From January 14th 1916	2,369.47	1.24103	2940.58
February	3,851.81	1.30	5,007.35
March	3,509.46	1.42875	5,014.06
April	3,523.75	1.55	5,461.81
May	3,412.52	1.55	5,289.41
June	3,597.36	1.55	5,575.91
July	3,177.55	1.52256	4,838.02
August	2,676.22	1.03962	2,782.26
September	2,128.78	.90c.	1,915.90
October	2,189.27	.90c.	1,970.34
November	2,618.04	.90c.	2,356.24
December	3,135.74	1.13965	3,573.66
1917			
January	2,316.26	1.61606	3,743.66
February	2,430.32	1.70	4,131.54
March	2,068.21	1.84413	3,814.05
April	1,870.21	1.90	3,553.40
	$44,874.97		61,967.75

1917			
May	2,267.51	1.90	4,308.27
June	1,767.58	1.90	3,358.40
July	1,900.38	1.90	3,610.72
August	1,791.95	1.93738	3,471.69
September	1,523.36	2.00	3,046.72
October	1,204.17	2.00	2,408.34
November	No Runs		
December	No Runs		
	10,454.95		20,204.14
Grand Totals	407,360.69		$386,393.95

Summary.

	Barrels	Value.
From January 1st, 1912 to January 1, 1913	134,661,23	103,799.49
From January 1st, 1913 to July 1st, 1915	191,562.72	179,662.02
From July 1st, 1915 to January 14th, 1916	25,806.82	20,760.55
From January 14th, 1916 to May 1st, 1917	44,874.97	61,967.75
From May 1st, 1917 to December 31, Inc., 1917	10,454.95	20,204.14
	407,360.69	$386,393.95

2-April 17-1918-5.

Filed Jan. 27, 1919.

38 (No. 1164).

PLAINTIFF'S EX. "NEAL'S ESTIMATE."

Statement of Total Oil Run by the Gulf Refining Co. of Louisiana from Wells known as Marshall Nos. 1, 2, 3, 4 and 5, from January, 1912, the time number 4, began to produce oil, to December 31, 1917.

	Bbls.	Value.
Total oil run	407,360.69	$386,393.95

Marshall Wells Nos. 1, 2, 3, 4, and 5 were operated into the same set of tanks jointly.

By dividing the total production and value by 5, the number of wells operated together, thus allowing an equal production of oil to all wells operated on the lease, we have as the total estimated production of well No. 4; 81,472.14 barrels of oil of a value of $77,278.79.

Cost of Drilling, Equipping and Operating Well No. 4.

Cost of drilling and equipping	$11,331.64
Cost of operating the well to December 31, 1917	9,311.55
Total	$20,643.19
Value of estimated production of well No. 4	$77,278.79
Cost of drilling, equipping and operating well	20,643.19
Value of production in excess of cost of production	$56,635.60

The well was commenced to be drilled December 1, 1911, and completed January 31, 1912.

The following parties received a part of the oil and value as shown by the records of the Gulf Refining Co. of La.: H. L. Heiperrin, Crude Oil Co., Natalie Oil Co., and J. A. Thigpen and L. S. Herold, Gulf Refining Co. of Louisiana.

This estimate prepared by Jas. W. Neal, Special Agent General Land Office.

Filed Jan. 27, 1919.

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39 (EXCEPTION GULF REFINING CO. TO MASTER'S REPORT).

In the District Court of the United States for the Western District of Louisiana.

United States of America, Plaintiff,
vs. No. 1163 In Equity.
J. M. Walling, et al., Defendants.

Now comes the Gulf Refining Company of Louisiana, defendant herein, and excepts to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That the Master has in his said report stated and certified that the land in controversy is the property of the United States as unsurveyed lands; whereas he should have certified and reported that the property in controversy is an integral part of fractional southeast quarter

or Lot 5 of Section 10, Township 20 North, Range 16 West, a tract of surveyed land long since patented by the United States.

2.

That the Master in said report stated and certified that the defendants,

"while conceding that this case falls in the same category as that of the Jeems Bayou Hunting & Fishing Club, that the case should be differentiated from that case because the area involved in this case is comparatively very small and that the maxim de minimis lex non curat should apply;"

whereas in truth and in fact the defendant made no such admission and the Master should not have so reported.

3.

That the Master in said report stated and certified that

"They contend that in these particular cases the lines run by Warren are substantially meander lines, admitting that, as contended for by plaintiff, at some points in skirting the shore of Ferry Lake, Warren did abruptly (and technically speaking wrongfully) quit the shore line almost at right angles and deliberately left out, between his courses and the real sinuosity of the lake shore, high timbered lands in place, but that he also embraced within his meander as land, bits of water almost equalling the land left out, which resulted in the Government losing nothing, because, in patenting the particular areas the

Government got paid for as many acres as if Warren had carefully followed the contour and sinuosities of the lake; therefore, if Warren did wrongfully leave out between his meander and the actual shore the high timber lands, it is a case of damnum absque injuria so far as the Government is concerned",

whereas defendant made no such admission or contention and the Master should have reported and certified that defendant contends and insisted before him that Warren's line was in fact and in law a meander line and not a line of boundary; the arguments of the defendant relative to water areas included in the acreage shown on Warren's survey being merely arguendo.

4.

That Master reported and certified that the line run by Warren relative to the property in controversy was not in truth a meander line and was not run according to the principles governing the running of meander lines; whereas he should have reported and certified that said line was in truth and in fact a meander line, and not a line of boundary.

5.

That the Master has in said report erroneously stated and certified that Warren's survey of township 20 North, Range 16 West, was not a proper survey of the township; whereas he should have reported that under all the circumstances under which the survey was made and the instruments then in use, the survey was not only a reasonably correct one, but was made with a remarkable degree of accuracy.

6.

That the Master in said report erroneously stated that defendant's only claim is,

"that taking the whole of the northern shore of Ferry Lake, including Sections 3, 10, 11, 12, 13 and 24, surveyed by Warren the area of land lying between the Warren meander line and Kidder's establishment of the 173.09 contour line, was 69.56 acres, and that Warren's survey included within it about 44 acres of land which was in fact water; so that the Government as respects this part of the township would only lose the difference, or 25.56 acres, which defendants virtually admit still technically remain in the Government as left out of the Warren survey";

whereas the facts are, and the Master should have certified and reported, that defendant never made any admission that the land "still technically remains in the Government as left out of the Warren survey";
41 but, on the contrary, that it contended and insisted that the land in controversy was embraced within the Warren survey as part of fractional southeast quarter or Lot 5 of Section 10, Township 20 North, Range 16 West, a tract of land bounded by the high water line of Ferry Lake and long since patented by the United States; the contention of the defendant relative to water surface being made arguendo.

7.

That the Master reported and so certified that

"Defendants cannot now eke out any title to land, admittedly not within the boundaries of the property pat-

ented, on the ground that their ancestors in title did not get quite the acreage, and, therefore, the present defendants are entitled to hold entirely new areas belonging to the Government as an offset";

whereas the facts are, and the Master should have so reported, that defendant never made any such contention, but has insisted and still insists, that the tract of land in controversy is within the boundaries of the property patented; defendant's counsel making the argument as to the water surface referred to only by way of argument.

8.

That the Master has in said report stated and certified that

"Baldly stated, the proposition of defendants is in effect that if the Government has made a gain by selling water for land, it would be equitable to permit the occupant of a piece of unsurveyed land in this township, which land is about equal to the water area previously sold, to compensate and defeat the Government's claim for said unsurveyed land by replying to the suit 'you have already been paid for all the land actually in this township and I should keep this piece and you will really suffer no loss'";

whereas defendant never made such contention and the Master should not have so reported and certified, but should have stated that the defendant insisted that the land in controversy was not unsurveyed land but an integral part of fractional southeast quarter or Lot 5 of Section 10, Township 20 North, Range 16 West, long since patented by the United States; the arguments ad-

vanced by counsel for the defendant with reference to water surface being by way of illustration and argument only.

9.

That the Master has in said report stated and certified that defendants

42 "contend the area is so little and when it was left out by Warren so utterly worthless that the Government's claims should be dismissed on the ground of de minimis lex non curat;"

whereas the Master should have reported and certified that the defendant's contention and insistence was that Warren's purported meander line was in truth and in fact and in law a meander line, and not a line of boundary, and that the tract in controversy was not left out of the Warren survey, but formed an integral part of the subdivision known as "fractional southeast quarter or Lot 5 of Section 10, Township 20 North, Range 16 West, long since patented by the United States; the reference by defendant as to the small quantity of land involved being part of its argument only, as going to disprove the plaintiff's contention.

10.

That the Master reported and certified as a fact,

"that at the points complained of, these lines of Warren were not run according to the above principles, but that he arbitrarily in such instances left the shore at right angles thereto, blazed his way thro high lands heavily timbered, and then returning to the shore line some distance apart from his departure";

whereas the Master should have certified and reported that the lines run by Warren as meander lines were in truth and in fact meander lines, according to the principles of surveying and the laws of the United States.

11.

That the Master has in said report stated and certified that the Warren meander line was a line of boundary, and not a meander line; whereas he should have reported and certified that the lake front boundary of the subdivision described as "fractional southeast quarter or Lot 5 of Section 10, Township 20 North, Range 16 West," long since patented by the United States, is the ordinary high water mark of Ferry Lake, and not the Warren meander line.

12.

That the Master has reported and certified that the oil produced by the Gulf Refining Company of Louisiana for its account was of the value of $77,278.79; whereas he should have reported and certified the value
43 of said oil to have been $21,734.25.

13.

That the Master has reported and certified that judgment should be rendered against this defendant in the sum of $56,634.87; whereas he should have reported and certified that no money judgment should be rendered against this defendant.

14.

That the Master has reported and certified that judgment should be rendered against this defendant for the total value of the oil produced from the property less the

cost of drilling, equipping and operating the well; whereas he should have reported and certified that if any money judgment should be rendered against this defendant, same should not exceed the value of the oil which it appropriated to its own account less the cost of drilling equipping and operating, as aforesaid.

15.

That the Master has reported and certified that a money judgment should be rendered against this defendant for the difference between the gross value of the oil produced from the property and the counter claim; whereas he should have reported and certified that if any money judgment should be rendered against this defendant, and if such money judgment should be based upon the gross value of the oil, that the rights of this defendant should be reserved to recover back from other parties who have received oil from the property as royalties or otherwise, the amounts and value of the oil delivered to them.

16.

That the said Master has in said report certified that this defendant should pay interest upon the amount of judgment rendered against it, at the rate of five (5%) per cent per annum from the filing of the report whereas he should have certified that if any judgment is rendered against this defendant, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore defendant prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,
Solicitors for Defendant Gulf
Refining Company of Louisiana.

44 Indorsed: Exceptions of the Gulf Refining Company of Louisiana to the report of the Special Master. Filed Jan. 30, 1919.

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45 (DECREE.)

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,
v. No. 1163 In Equity.
J. M. Walling, Natalie Oil Company, Crude Oil Company, Gulf Refining Company of Louisiana.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

I. That the report filed herein January 11, 1919, by E. H. Randolph, Special Master in Chancery, be and the same is hereby approved and confirmed; and, accordingly:

II. That the land described in the bill of complaint, namely, Lot Seven (7), of Section Ten (10), in Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing twelve and seventy-two hundredths (12.72) acres, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and ex-officio Surveyor General for the State of Louisiana, be and the same is hereby decreed to have been at all times from

and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

III. That the cloud upon plaintiff's title, arising from the assertion by defendants of the ownership of said above described land, be removed, and that any and all deeds, leases or instruments of writing, of any kind or nature whatever, upon which said claim of ownership of the defendants may be based, insofar as the same may include the above described property, directly or indirectly, be declared null and void, and to that extent, cancelled and annulled.

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or
46 any of them, and that the possession of the said land shall be restored to plaintiff.

V. That the defendants, namely, Natalie Oil Company and Gulf Refining Company of Louisiana (the Crude Oil Company having been dissolved before the institution of this suit, and, hence, not cited, and J. M. Walling, having disposed of his claim to said land to the Gulf Refining Company of Louisiana before the institution of this suit, and neither of said defendants having, or asserting, any interest herein), shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas or other minerals, on or under the same, and from going upon said land, or in any manner using the

same, or extracting oil or other minerals therefrom, and, accordingly, that a writ of injunction issue restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of the Gulf Refining Company of Louisiana, and the said defendant is hereby condemned and ordered to pay to plaintiff, the full sum of Fifty-six Thousand, Six Hundred and Thirty-four and 87/100 ($56,634.87) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VII. That the rights of the United States of America, if any, to recover royalties paid by the Gulf Refining Company of Louisiana, to H. L. Heilperin, Natalie Oil Company, J. A. Thigpen, and S. L. Herold, be reserved, in accordance with the recommendation set forth in the Master's report.

VIII. That the said defendants be and they are hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to
47 plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

IX. That the said defendants be, and they are hereby condemned and ordered to pay all costs of this suit.

X. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreveport,

Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of gas, oil and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree, furnish bond, with good and solvent surety, to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of Five Thousand ($5,000.00) Dollars, which said bond may hereafter be increased, or reduced, as the Court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil or other property that may come into his hands as receiver. The said receiver shall surrender possession of said land and of all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said receiver, to obtain such accounting from the said receiver as the Court may order, to require the delivery to the United States of such land

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and property, and the accounting and payment to be made by the receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do and perform such other acts, in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

Thus done, read and signed in open Court this 4th day of August 1919.

RUFUS E. FOSTER,
United States Judge.

Indorsed: Decree. Filed Aug. 12, 1919.
B.

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49 (DEFENDANT'S PETITION AND ORDER OF APPEAL.)

In the District Court of the United States, for the Western District of Louisiana.

United States of America,
Plaintiff,
vs. No. 1163 In Equity.

J. M. Walling, Natalie Oil Company, Crude Oil Company, Gulf Refining Company of Louisiana,
Defendants.

To the Honorable Judge of the District Court of the United States for the Western District of Louisiana, sitting within and for the Shreveport Division.

The above named defendant, the Gulf Refining Company of Louisiana, feeling itself aggrieved by the decree

made and entered in this cause on the 13th day of August, 1919, does hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit for the reasons specified in the assignment of errors, which has been filed, and now prays that its appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers on which said decree was based, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans.

And your petitioner further prays that the proper order touching the security to be required of it to perfect said appeal.

J. A. THIGPEN,
S. L. HEROLD,
Solicitors for Defendant Gulf Refining Company of Louisiana.

ORDER.

Let the foregoing petition be granted and the appeal allowed which shall operate as a supersedeas upon the defendant giving bond as required by law in the sum of Eighty-five Thousand ($85,000.00) Dollars.

RUFUS E. FOSTER,
United States District Judge.

Sept. 23rd, 1919.

50 Indorsed: Petition and Order for appeal. Filed Sep. 23, 1919.
B.

51 (DEFENDANT'S ASSIGNMENT OF ERRORS)

In the District Court of the United States for the Western District of Louisiana.

United States of America,

Plaintiff,

vs. No. 1163 In Equity.

J. M. Walling, et al,

Defendants.

And now, on this the 22nd day of September, 1919, comes the Gulf Refining Company of Louisiana, defendant herein, by its solicitors, Thigpen & Herold, and says that the decree entered in the above cause on the 13th day of August, 1919, is erroneous and unjust to the said Gulf Refining Company of Louisiana; and for specification of such errors, shows:

First.

The Court erred in holding that the property in controversy is public lands of the United States.

Second.

The Court erred in holding that the premises in controversy is not a part of the fractional southeast quarter or Lot Five (5) of Section Ten (10), Township Twenty (20) North, Range Sixteen (16) West, patented by the United States to Thadeus W. Marshall on the third day of July, 1897.

Third.

The Court erred in holding that the meander line run by A. W. Warren, United States Deputy Surveyor, is a line of boundary.

Fourth.

The Court erred in holding that Lot 5 or the fractional southeast quarter of Section 10, Township 20 North, Range 16 West, owned by defendant under a regular chain of title from Thaddeus W. Marshall, the patentee thereof, does not extend to Ferry Lake, as shown by the approved official plat of survey by A. W. Warren, United States Deputy Surveyor.

Fifth.

The Court erred in holding without any evidence to support the finding that Warren's meander of Ferry Lake in the fractional southeast quarter, or Lot 5, of said
52 Section 10, Township 20 North, Range 16 West, was not run to denote the boundary of the property as being the natural monument of Ferry Lake, but is in itself the boundary.

Sixth.

The Court erred in holding that there were any facts or circumstances shown in the evidence, disclosing any intention to limit the property known as Lot 5 or fractional southeast quarter of Section 10, Township 20 North, Range 16 West, to actual traverse lines or to cause such result to follow the survey.

Seventh.

The Court erred in condemning this defendant for the value of any oil produced from the premises in controversy.

Eighth.

The Court erred in condemning this defendant for the net value of all the oil produced from the premises when it was stipulated that the Gulf Refining Company of Louisiana owned only forty-seven & 1/2 (47½%) per cent interest in the well from which such oil was extracted, the remaining fifty-two & ½ (52½%) per cent being taken by the Crude Oil Company, which is not a party to this suit.

Ninth.

The Court erred in condemning defendant Gulf Refining Company of Louisiana for the entire net value of the oil from the well on the premises in controversy (as such value was ascertained by the Court) when the undisputed evidence and admission is that 52½% of such oil was produced by and for a third person, from whom the Gulf Refining Company of Louisiana for the entire net value of the oil paid.

Tenth.

The Court erred in holding that a purchaser of oil actually produced and reduced to possession can be held liable for the value thereof to one to whom the Court adjudges the ownership of the land from which such oil has been produced.

Eleventh.

The Court erred in holding that the production of oil from the well in controversy was to be determined by dividing the total production of the five wells drilled on

Lot 5 of Section 10, Township 20 North, Range
53 16 West, by five, instead of by estimating such production by monthly gauges of each well as was done by defendant.

Wherefore, defendant prays that the said decree be reversed and the District Court directed to dismiss the bill; and for general relief.

J. A. THIGPEN,
S. L. HEROLD,
Solicitors for Defendant Gulf Refining Company of Louisiana.

Indorsed: Assignment of errors. Filed Sept. 22, 1919.

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54 SUPERSEDEAS BOND ON APPEAL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,
Plaintiff,
vs. No. 1163 In Equity.

J. M. Walling, Natalie Oil Company, Crude Oil Company, Gulf Refining Company of Louisiana,
Defendants.

Know all men by these presents:

That we, the Gulf Refining Company of Louisiana, as principal, and the American Surety Company of N. Y. as surety, are held and firmly bound unto and in favor

of the United States of America, appellee in the above cause, in the full sum of Eighty-five Thousand Dollars ($85,000.00), for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at Shreveport, Louisiana, on this the 23rd day of September, 1919.

The condition of the above obligation is such that,

Whereas on the 13th day of August, 1919, in the District Court of the United States for the Western District of Louisiana, in a suit pending in that Court wherein the United States of America was plaintiff and J. M. Walling, Natalie Oil Company, Crude Oil Company and the Gulf Refining Company of Louisiana were defendants, numbered on the Equity Docket 1163, a decree was filed rendered and signed against the said Gulf Refining Company of Louisiana, and the said Gulf Refining Company of Louisiana having obtained an appeal with supersedeas to the United States Circuit Court of Appeals for the Fifth Circuit;

Now if the said Gulf Refining Company of Louisiana shall prosecute such appeal to effect and answer
55 all damages and costs if it fail to make its plea good, then the above obligation to be void; otherwise to remain in full force and effect.

GULF REFINING COMPANY OF LOUISIANA,
By S. L. HEROLD.
AMERICAN SURETY COMPANY, N. Y.
By R. L. GAFFNEY,
Atty. in fact.

Approved:
This 23rd day of September, 1919.
RUFUS E. FOSTER,
United States District Judge.

Indorsed: Supersedeas Bond. Filed Sept. 23, 1919.

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56 (PLAINTIFF'S PETITION, ORDER OF APPEAL & ASSIGNMENT OF ERRORS).

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,
v. No. 1163 In Equity.
J. M. Walling, et al.

To the Honorable, the Judge of the District Court of the United States, for the Western District of Louisiana:

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, and with respect represents:

That on August 4, 1919, this Court entered a final decree in said cause, from which the defendants herein have appealed, and that in said decree there was, in part, error greatly to the prejudice and injury of plaintiff, as will more fully appear by the assignment of errors filed herewith. Plaintiff desires to take a cross appeal from said decree to the United States Circuit Court of Appeals of the Fifth Circuit.

Wherefore, it is prayed that a cross appeal may be allowed to plaintiff in this cause from this Court to the

United States Circuit Court of Appeals for the Fifth Circuit, and that proper orders for the allowance of such appeal may be made by this Court.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

57 ORDER.

The foregoing petition for a cross appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed a cross appeal herein, from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 10 day of Nov., 1919.

RUFUS E. FOSTER,
United States Judge.

ASSIGNMENT OF ERRORS ON PLAINTIFF'S CROSS APPEAL.

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,
v. No. 1163 In Equity.
J. M. Walling, et al.

Now comes plaintiff, the United States of America, and in connection with its petition for a cross appeal herein,

presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to-wit:

I.

The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counterclaim of the Gulf Refining Company of Louisiana, for costs and expenses in-
58 curred in producing said oil, and in not entering a decree in favor of plaintiff for the total value of said oil.

II.

The Court erred in allowing to said defendant, as an offset or counterclaim, the cost of the production of said oil and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had been withdrawn from any appropriation whatever by orders of the President of the United States, dated, respectively, December 15, 1908, and July 2, 1910, which orders were issued for the purpose of conserving the public interest and in aid of pending and proposed legislation. The said well was drilled in violation of each of said orders and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said well.

III.

The Court erred in applying herein the rules relating to a case of innocent trespass, for the reason that there

was no evidence whatever to show that the defendants acted in good faith in extracting and removing the oil in question.

IV.

The Court further erred, in any event, in finding and holding that said defendants were entitled to deduct from the value of the oil extracted from the land in suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit or counterclaim herein.

Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim for the cost of drilling, equipping and operating the well in suit, and that a decree be rendered and entered, in favor of plaintiff herein, for the full value of the oil
59 extracted and removed from the land in controversy, as shown by the report of the Master in Chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to enter a decree in favor of the plaintiff for the full value of said oil, without offset or deduction of any kind.

Plaintiff further prays that, in any event, the costs of drilling and equipping said well be deducted and excluded from any allowance that may be made to defendants as an offset or counterclaim herein.

Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed: Petition for Cross Appeal, order thereon and assignment of errors. Filed Nov. 12, 1919.

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60 STIPULATION OF COUNSEL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,

v. No. 1163.

J. M. Walling, et al.

Counsel for plaintiff and defendants do hereby enter into the following stipulation relative to the contents of the record on appeal in the above numbered and entitled cause:

Whereas, this cause together with suits numbered 1158, 1162 and 1164 were consolidated in the District Court for trial with the case entitled United States v. C. W. Lane, et al, No. 1153, on the docket of said Court, which suit has likewise been appealed to the United States Circuit Court of Appeals for the Fifth Circuit; and,

Whereas, in order to reduce the size of the several transcripts counsel have agreed that the record on appeal in the said cause, No. 1153, United States v. C. W. Lane, et al shall contain and include certain testimony, exhibits, the Master's report, the opinion of the Court, certain general stipulations of counsel and other matters applicable to all of the cases so consolidated, including maps and exhibits sent up in the original; and,

Whereas, counsel have agreed to incorporate in the transcript in this cause only the pleadings, exhibits and other things specially applicable to this suit; now, therefore:

It is stipulated that the transcript of appeal in the said cause, entitled United States v. C. W. Lane, et al, No. 1153, on the docket of the United States District Court for the Western District of Louisiana, shall be a part of the record on appeal in this suit, and shall be applicable thereto.

61 It is stipulated that the Clerk shall prepare the transcript of appeal in this cause, and shall copy into and incorporate therein the following, to-wit:

1. Bill of Complaint.

2. Answers of Gulf Refining Co. of Louisiana, and Natalie Oil Company.

3. Plaintiff's reply to setoff and counterclaim.

4. Interrogatories propounded by plaintiff to the Gulf Refining Co. of Louisiana.

5. Answer of Gulf Refining Company of Louisiana to interrogatories.

6. Additional interrogatories.

7. Answer of Gulf Refining Company of Louisiana to additional interrogatories.

8. Order appointing E. H. Randolph Special Master in Chancery.

9. Patent from the United States to Thaddeus W. Marshall, covering W½ of NE¼, and Lot 5 of Section 10, T. 20 North, Range 16 West.

(To avoid the inclusion of the abstract offered by defendants to show their chain of title, it is admitted that defendants hold by mesne conveyance from Thaddeus W. Marshall the land described in said patent. Said chain of title describes land only as described in said patent; the parties admitting the facts only and reserving their rights and contentions with respect to the effect of said patent.

10. Extract from tract book relating to Section 10, Township 20 N., R. 16 W., marked plaintiff's Exhibit H.

11. Entire statement identified by the witness, James W. Neal, marked plaintiff's Exhibit M, and statement marked "Neal Estimate."

12. Exceptions of Gulf Refining Company of Louisiana to Master's report.

13. Plaintiff's exceptions to Master's report.

14. Final decree.

15. Defendants petition for appeal, order thereon, assignment of errors and appeal bond.

16. Plaintiff's petition for cross appeal, order thereon and assignment of errors,

17. This stipulation.

Thus done and signed this 18th day of May, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.
THIGPEN & HEROLD,
Attorneys for Defendants.

Filed May 19, 1920.

62 CERTIFICATE:

I, W. B. LEE, Clerk of the United States District Court, Fifth Circuit and Western District of Louisiana, do hereby certify that the foregoing sixty pages contain and form a full, true, correct and complete transcript of the record, assignment of errors and all proceedings had in a cause entitled The United States of America vs. J. M. Walling, et al, No. 1163 In Equity on the Docket of said Court, as fully as the same remains on file and of record in my office at Shreveport, Louisiana—this transcript having been prepared in accordance with stipulation of counsel, a copy of which accompanies this transcript.

Witness my hand and seal of office at the City of Shreveport, Louisiana, on this the 21st day of May, A. D. 1920.

(Seal) W. B. LEE, Clerk.
U. S. District Court, for the
Western District of Louisiana.

Citations omitted from the printed record, being filed in the original.

* * * * * * * * *

75 That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Stipulation correcting error in decree of District Court, filed October 1, 1920.

In the United States Circuit Court of Appeals, Fifth Circuit.

GULF REFINING COMPANY OF LOUISIANA, appellant, *versus* UNITED STATES OF AMERICA, APPELLEE, and UNITED STATES OF AMERICA, APPELLANT, *versus* J. M. WALLING, NATALIE OIL COMPANY, CRUDE Oil Company, and Gulf Refining Company of Louisiana, appellees.	No. 3539.

It is stipulated that the joint answer of the Gulf Refining Company of Louisiana and the Natalie Oil Company (Tr., pp. 14–15), having set up ownership in the property in controversy entirely by the Gulf Refining Company of Louisiana, and disclaiming any ownership therein by Natalie Oil Company, that it was agreed between counsel prior to the signing of the decree that the name of Natalie Oil Company should be omitted from the decree except with respect to the reservation in paragraph 7 thereof, and that therefore the reference in the decree to "defendants" was a clerical error, inasmuch as the reference should have been to "defendant," the entire
76 decree being against Gulf Refining Company of Louisiana, and that in paragraph 5 of the decree (Tr., p. 57) it was the intention of counsel to omit mention of Natalie Oil Company, and that mention of such company in such paragraph is erroneous, and that the same may therefore be stricken from the decree as it appears in the transcript.

(Signed) THIGPEN & HEROLD,
Attorney for Appellants and Cross-Appellees.
(Signed) ROBERT A. HUNTER.
Attorney for Appellee and Cross-Appellant.

77 *Argument and submission.*

Extract from the Minutes of February 24th, 1921.

THE GULF REFINING COMPANY OF LOUISIANA *versus* THE UNITED STATES OF AMERICA, ETC.	No. 3539.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., special assistant to the Attorney General, for appellee and appellant, The United States of America, and S. L.

Herold, Esq., for appellant, The Gulf Refining Company of Louisiana, and appellees, J. M. Walling, et als., and was submitted to the Court.

Opinion of the court.

Filed June 22nd, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3536.

C. W. LANE ET AL., APPELLANTS AND CROSS-APPELLEES,
versus
THE UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT.

No. 3537.

GULF REFINING COMPANY OF LOUISIANA, APPELLANT AND CROSS-appellee,
versus
THE UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT.

78 No. 3538.

SOUTHWESTERN GAS & ELECTRIC COMPANY ET AL., APPELLANTS AND cross-appellees,
versus
THE UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT.

No. 3539.

GULF REFINING COMPANY OF LOUISIANA ET AL., APPELLANTS AND cross-appellees,
versus
THE UNITED STATES OF AMERICA, APPELLEE AND CROSS-APPELLANT.

No. 3540.

THE UNITED STATES OF AMERICA, APPELLANT,

MRS. JESSIE M. LA ROBADIERRE ET AL., APPELLEES.

Appeals and cross-appeals from the District Court of the United States for the Western District of Louisiana.

S. L. Herold, J. A. Thigpen (D. Edward Greer, Hampden Story, and J. D. Wilkinson on the brief), for appellants and cross-appellees in Nos. 3536, 3537, 3538, and 3539.

Robert A. Hunter, special assistant to the Attorney General, for appellee and cross-appellant in Nos. 3536, 3537, 3538, and 3539.

Robert A. Hunter, special assistant to the Attorney General, for appellant in No. 3540.

S. L. Herold, J. A. Thigpen (D. Edward Greer, Hampden Story, and J. D. Wilkinson on the brief), for appellees in No. 3540.

79 Before WALKER, BRYAN, and KING, circuit judges.

BRYAN, *Circuit Judge:*

These suits were brought by the United States to recover several small tracts of land in Caddo Parish, Louisiana, and also to compel an accounting for oil and gas produced therefrom by appellants. The lands lie in separate tracts along the edge of Ferry Lake in township 20, north of range 16 west, Louisiana meridian. This township was first surveyed in 1839 by United States Deputy Surveyor A. W. Warren, and the plat filed by him represents several fractional sections bordering on the lake. According to that plat the lands in litigation were included within these fractional sections.

Because of the discovery of oil thereon the township was resurveyed in 1917, under the direction of Arthur D. Kidder, supervisor of surveys for the General Land Office. By this later survey the lands in litigation are represented as lying between the meander lines of Warren's survey and Ferry Lake, and are designated as new subdivisions omitted from Warren's survey.

The fractional sections surrounding the lake had been sold and patented from time to time, and acquired by appellants long before the resurvey of 1917 was made.

There are no disputed questions of fact. It was admitted by stipulation that Kidder's survey was accurately made, and that Kidder correctly reestablished and reproduced Warren's survey; that the contour line of Ferry Lake, at mean high water, in 1812, when Louisiana was admitted into the Union, in 1839, when Warren made his survey, and in 1917, when Kidder made his survey, was 173.09 feet above mean Gulf level; that all the tracts of land in litigation lie above that elevation and are upland in character; and that Ferry Lake is, and was in 1812 and 1839, a navigable body of water.

80 It was also shown beyond question that Warren in his survey ran the section lines to, and accurately established corners and set meander posts on, the contour line of Ferry Lake.

In running out his meander lines, Warren did not always follow the exact contour of the lake, but he approximated it very closely in so far as the lands involved in these suits are concerned. In some instances, irregular areas of land which jut out in the water are outside the meander lines, and in other instances, where the land sharply recedes, water is inside the meander lines. Very little difference in acreage between the land so excluded and the water so included is shown by the testimony. In at least one of the cases the area of water included exceeds the area of land excluded.

In the first mentioned of these suits Warren's survey represents the land in that fractional quarter-quarter section as containing

26.80 acres; Kidder's survey adds as a new subdivision 5.67 acres. In the second suit, Warren's survey represents 114.80 acres; Kidder's survey adds 11.49 acres. In the third suit, Warren's survey represents 155 acres; Kidder's survey adds 27.87 acres. In the fourth suit, Warren's survey represents 23 acres; Kidder's survey adds 12.72 acres. In the fifth and last suit, Warren's survey represents 83.75 acres; Kidder's survey adds 22.71 acres. It is for these additional acres the Government sues.

The cases were consolidated, and the court entered decrees sustaining the right of the Government to recover the lands, and also holding appellants liable to account for various amounts realized from the sale of oil and gas, but allowing credit for the costs of production. The Government by cross appeal in the first, second, third, and fourth suits contends that appellants should not be al-
81 lowed to deduct these expenses, but should be held liable as willful trespassers. In the fifth unit, that of United States v. La Robadierre and the Gulf Refining Co., No. 3540, the original defendants have not appealed, but the Government by direct appeal assigns as error the deduction of expenses of operation and the failure to hold the Gulf Refining Co. liable in solido with the other defendant.

It is the contention of the United States that the lands in litigation, lying between the meander lines of Warren's survey and Ferry Lake, are public lands which were never surveyed until 1917. Appellants on the other hand assert title as owners of the fractional sections.

Section 2396 of the Revised Statutes deals with the boundaries and contents of public lands, and provides that boundary lines shall be ascertained by running straight lines from established corners to opposite corresponding corners, except that, in those portions of a fractional township where corresponding corners can not be fixed, the boundary lines shall be ascertained by running from established corners "to the watercourse, Indian boundary line, or other external boundary of such fractional township." There is no other provision of law for the running of meander lines along a watercourse, but they are usually run by surveyors for the purpose of computing acreage. It is proper that they should show the sinuosities of the banks of the watercourse; for the watercourse, and not the meander line, is the true boundary. St. Paul & P. Railroad Co. v. Schurmeir, 7 Wall., 272; Hardin v. Jordan, 140 U. S., 371; Mitchell v. Smale, 140 U. S., 406; Producers Oil Co. v. Hanzen, 238 U. S., 325.

It was Warren's duty to bound the fractional sections on the lake, and it is apparent from his survey and field notes that it was his intention to do so. The survey is not invalidated by the failure
82 to include within the meander lines small, irregular areas of land. In Mitchell v. Smale, supra, the survey called for 4.53 acres, but it was held that title to 25 additional acres also passed by the patent. In that case the Supreme Court said:

"The difficulty of following the edge or margin of such projections, and all the various sinuosities of the water line, is the very

occasion and cause of running the meander line, which by its exclusions and inclusions of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream. The official plat made from such survey does not show the meander line, but shows the general form of the lake deduced therefrom and the surrounding fractional lots adjoining and bordering on the same. The patents when issued refer to this plat for identification of the lots conveyed and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water, regularly follow."

Meander lines, and not watercourses, are held to be boundaries, where there is no body of water within a reasonable distance therefrom, as in Horne v. Smith, 159 U. S., 40; Producers Oil Co. v. Hanzen, supra; or where there is no body of water at all, as in French-Glenn Live Stock Co. v. Springer, 185 U. S., 47; Gauthier v. Morrison, 232 U. S., 452; Chapman & Dewey Lumber Co. v. St. Francis Levee District, 232 U. S., 186; and Lee Wilson & Co.
83 v. United States, 245 U. S., 24; or where there is gross fraud, as in Security Land & Exploration Co. v. Burns, 193 U. S., 167. These cases are relied upon by the Government, but in our opinion they are inapplicable to the facts under consideration. In none of the cases cited on the Government's briefs is the rule stated in Mitchell v. Smale overruled or even modified; but, on the contrary, in several of them that case is cited with approval. Here the watercourse was in existence and was actually meandered. There is no suspicion or suggestion that Warren's survey of the lands in litigation was fraudulent. That part of his survey which is in question in these cases was made with a fair degree of accuracy, and for the purposes of computing the acreage and of showing the sinuosities of Ferry Lake as a boundary. It is not impeached by the fact that a subsequent survey, made with great minuteness because of the discovery of oil, disclosed comparatively slight variations from the established boundary.

There being no appeal by the original defendants in United States vs. LaRobadierre et al., No. 3540, the decree in that case is affirmed. In the other cases, the decrees are reversed on the original appeals, with directions to dismiss the bills of complaint; and the cross appeals are dismissed.

84 *Judgment.*

Extract from the minutes of June 22nd, 1921.

THE GULF REFINING COMPANY OF LOUISIANA *versus* THE UNITED STATES OF AMERICA and THE UNITED STATES OF AMERICA *versus* J. M. WALLING ET AL.	No. 3539.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said District Court in this cause be, and the same is hereby, reversed on the original appeal, with direction to dismiss the bill of complaint; and that the cross appeal sued out herein be, and the same is hereby, dismissed.

85 *Petition for appeal and order allowing same.*

Filed August 20, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

GULF REFINING COMPANY OF LOUISIANA ET AL., appellants and cross appellees, *versus* UNITED STATES OF AMERICA, APPELLEE AND CROSS appellant.	No. 3539.

To the Honorable, the Judges of the United States Circuit Court of Appeals in and for the Fifth Circuit:

Now into this honorable court comes the United States of America, appellee and cross appellant, and says that on June 22, 1921, this court entered a decree herein in favor of appellants and cross appellees and against the United States of America, in which decree there was error greatly to the prejudice and injury of appellee and cross appellant, as will more fully appear by the assignment of errors which is attached hereto and filed herewith.

Wherefore, the United States of America prays that an appeal may be allowed in said cause from this court to the Supreme Court of the United States and that proper orders for the allowance of such an appeal be made by this court.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

ORDER.

The foregoing petition for an appeal in the above numbered and entitled cause from the United States Circuit Court of Appeals of the Fifth Circuit to the Supreme Court of the United States
96 being considered, and the assignment of errors being attached thereto and filed therewith, it is ordered:

That an appeal be granted and allowed in the above numbered and entitled cause to the United States of America as prayed for from the United States Circuit Court of Appeals of the Fifth Circuit to the Supreme Court of the United States.

Thus done and signed this 15th day of August, 1921.

(Signed) R. W. WARREN,
Judge, United States Circuit Court of Appeals, Fifth Circuit.

Assignment of errors.

Filed August 20, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

GULF REFINING COMPANY OF LOUISIANA ET AL., APPELLANTS AND CROSS APPELLEES, *versus* UNITED STATES OF AMERICA, APPELLEE AND CROSS APPELLANT.	No. 3539.

Now comes the United States of America, appellee and cross appellant in the above numbered and entitled cause, and in connection with the petition for an appeal herein presents this assignment of errors and says that the opinion and decree entered in this cause by the United States Circuit Court of Appeals of the Fifth Circuit on June 22, 1921, is erroneous in the following particulars, to wit:

I.

The court erred in holding that according to the plat of survey made by A. W. Warren, United States deputy surveyor,
97 the lands in litigation were included within the fractional sections represented by said plat as bordering upon Ferry Lake, whereas the court should have held that the tracts involved in said consolidated suits were not included within said fractional sections as delineated upon said plat, but were represented thereon only as a part of Ferry Lake and not as a part of any fractional section shown on said plat.

2.

The court erred in holding that said survey of A. W. Warren was made with a fair degree of accuracy for the purpose of computing the acreage and the sinuosities of the lake as a boundary; whereas the court should have held that there was manifest error in said survey or a material variation between the lines thereof and Ferry Lake; that said survey did not follow the sinuosities of the lake shore, or approximate its contour, or afford a reliable means of ascertaining the quantity of land in said fractional section.

3.

The court erred in holding that the said A. W. Warren intended to make the said lake the boundary of the land in suit, whereas the court should have held that the record of said survey does not show that the lines thereof were run with the meander or along the margin of said lake, and that, as actually made upon the ground, the lines of said survey were not run with the meander or along the margin of said lake.

4.

The court erred in not holding that said tract was, at the time of and since said survey, high land in place, covered with
88 native forest trees and vegetation characteristic of hill land, and was of the same character, geological formation and quality as the lands included by said Warren in his survey.

5.

The court erred in not holding that, inclusive of the land in suit, the said A. W. Warren omitted from his survey of the township 987.77 acres of high land in place between the so-called meander line and the mean high water elevation of Ferry Lake as it existed when the State of Louisiana was admitted into the Union and when said survey was made, and which mean high water elevation was known to said surveyor.

6.

The court erred in failing to hold that the tract in controversy was not included in said survey, either in fact or in law, and was not described or embraced in the patent relied upon by defendants.

7.

The court erred in holding that there were no disputed issues of fact and in overrulling the findings of fact made by the master in

chancery herein and approved by the district judge, including the finding that the land in suit was left unsurveyed by the said A. W. Warren and belonged to the public domain of the United States.

8.

The court erred in reversing the decree of the District Court in so far as same was favorable to the United States and in remanding said cause to the District Court with directions to dismiss the bill of complaint.

9.

The court erred in dismissing the cross appeal and in not reversing the decree of the District Court in so far as it allowed the defendants to offset the cost of drilling the wells against the value of the oil extracted from the land in suit, and in not remanding said cause with directions for the entry of a decree in favor of plaintiff for the full value of the oil, less only the expenses incurred by defendants in operating the wells.

Wherefore, the United States of America, appellee and cross appellant, prays that the opinion and decree of the United States Circuit Court of Appeals for the Fifth Circuit be reversed; that the decree of the District Court be affirmed in so far as it is favorable to the United States of America; that the said cause be remanded with directions for the entry of a decree in favor of the United States of America for the full value of the oil taken by defendants from said land, less only the cost of operating the wells, and excluding and disallowing as an offset or credit against the value of said oil the sums expended or costs incurred by defendants in drilling said wells, to the end that the United States may recover the value of said oil free of all costs incurred in discovering or reaching the same; and for general relief.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Stipulation as to transcript and original exhibits.

Filed August 20th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

C. W. LANE ET AL., APPELLANTS AND CROSS-appellees, *versus* UNITED STATES OF AMERICA, APPELLEE AND CROSS-appellant.	No. 3536.
GULF REFINING COMPANY OF LOUISIANA, APPELLANT and cross appellee, *versus* UNITED STATES OF AMERICA, APPELLEE AND CROSS appellant.	No. 3537.
SOUTHWESTERN GAS & ELECTRIC COMPANY ET AL., appellants and cross appellees, *versus* UNITED STATES OF AMERICA, APPELLEE AND CROSS appellant.	No. 3538.
GULF REFINING COMPANY OF LOUISIANA ET AL., appellants and cross appellees, *versus* UNITED STATES OF AMERICA, APPELLEE AND CROSS appellant.	No. 3539.

With regard to the appeals to be taken in the above numbered and entitled causes by the United States to the Supreme Court of the United States, it is stipulated by counsel for all parties as follows, to-wit:

1. That the transcripts of appeal shall be made up of the printed records filed in the United States Circuit Court of Appeals with the addition thereto of the proceedings had in said Court of Ap-
91 peals, and all stipulations of counsel contained in said printed records shall be applicable to these appeals.

2. That all exhibits transmitted to the Supreme Court of the United States in the original in connection with the appeal in case No. 3522, entitled Jeems Bayou Fishing & Hunting Club et al. v. United States (No. 407 on the docket of the Supreme Court of the United States), and which were offered in evidence and constitute part of the record in these suits, shall be deemed and considered as a part of the record on appeal in the above suits, said exhibits being as follows: Plat of survey made by A. W. Warren, deputy surveyor, approved August 31, 1839; field notes of Warren survey; resurvey plat of township 20 north, range 16 west, approved by the Commis-

sioner of the General Land Office July 24, 1916; supplemental topographic plat of township 20 north, range 16 west, approved March 28, 1917.

There shall also be sent up in the original the illustrative profile marked "Plaintiff's Exhibit F," and the report of L. L. Janes, ecologist.

3. A copy of this stipulation shall be incorporated in each of the records on appeal.

Thus done and signed this August 17, 1921.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

(Signed) J. A. THIGPEN,
S. L. HEROLD,
FOSTER, LOONEY & WILKINSON,
FRANK J. LOONEY,
HAMPDEN STORY,
J. W. WILKINSON,
Attorneys for Appellants and Cross Appellees.

92 *Clerk's certificate.*

UNITED STATES OF AMERICA.

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 75 to 91 next preceding this certificate contain full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said court, numbered 3539, wherein Gulf Refining Company of Louisiana is appellant and the United States of America is appellee, and the United States of America is appellant and J. M. Walling, Natalie Oil Company, Crude Oil Company, and Gulf Refining Company of Louisiana are appellees, as full, true, and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 74 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

I further certify that the plaintiff's Exhibit "F", Illustrative Profile, and the report of L. L. Janes, ecologist, forwarded to this court in the original, are transmitted herewith to the Supreme Court of the United States in the original, as per stipulation of counsel copied at page 89 of this record.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the city of

New Orleans, Louisiana, in the Fifth Circuit, this 24th day of August, A. D. 1921.

[SEAL.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

93 THE UNITED STATES OF AMERICA,

The President of the United States to the Gulf Refining Company of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a petition and order of appeal, and assignment of errors, sued out and filed in the clerk's office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein the Gulf Refining Company of Louisiana is appellant and cross appellee, and the United States of America is appellee and cross appellant, said cause bearing the number 3539 on the docket of the United States Circuit Court of Appeals for the Fifth Circuit, to show cause, if any there be, why the decree rendered against the said the United States of America and in said petition and order of appeal, and assignment of errors mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William Howard Taft, Chief Justice of the United States, this 15th day of August in the year of our Lord one thousand nine hundred and twenty-one.

[SEAL.]

R. W. WALKER,
United States Circuit Judge.

Service of the within citation of appeal accepted and acknowledged this 19th day of August, 1921.

J. A. THIGPEN,
S. L. HEROLD,
Attorneys of record for Appellants and Cross-Appellees.

No. 3539. United States Circuit Court of Appeals, Fifth Circuit.

Gulf Refining Company of Louisiana, Appellant, versus The United States of America, Appellee, and The United States of America, Appellant, versus J. M. Walling, Natalie Oil Company, Crude Oil Company, and Gulf Refining Company of Louisiana, Appellees. Citation. Filed 20 day of August, 1921. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

(Indorsed on cover:) File No. 28,458. U. S. Circuit Court Appeals, 5th Circuit. Term No. 503. The United States of America, Appellant, vs. The Gulf Refining Company of Louisiana. Filed August 31st, 1921. File No. 28,458.

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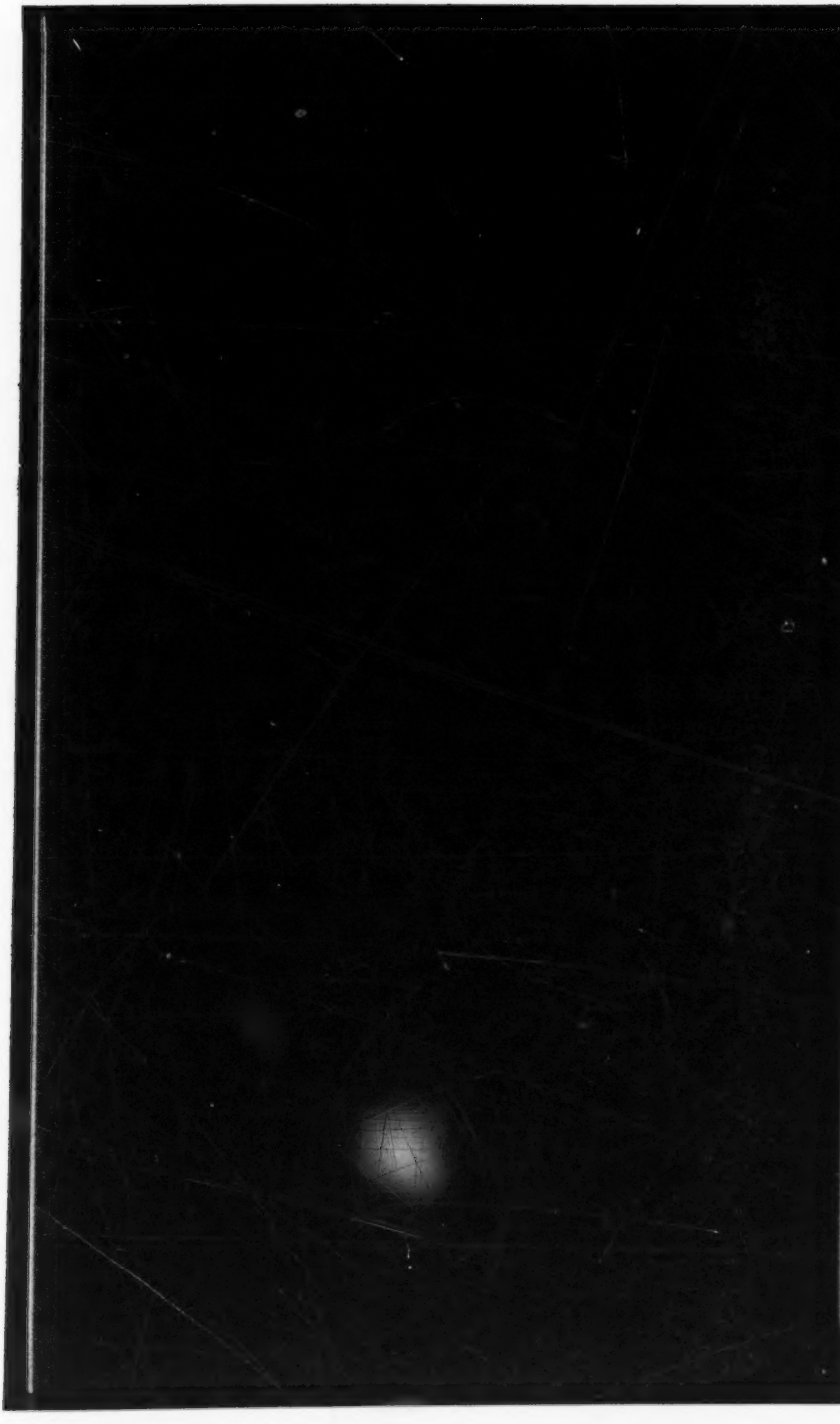

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In the Supreme Court of the United States

OCTOBER TERM, 1922.

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APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

These cases, with one other which was not appealed (*United States* v. *La Robadierre et al.*, District Court, No. 1164), were consolidated for trial in the District

Court. To reduce the size of the several transcripts it was stipulated that the record in *No. 160, United States* v. *Lane et al.*, should contain the testimony, master's report, opinion of the court, and other matters applicable to all of the cases, and that the records in the other suits should include only the pleadings, exhibits, and other things specially applicable thereto. When the cases were brought to this court another stipulation was entered into, to the effect, among other things, that all of the exhibits transmitted to this court in *No. 119, Jeems Bayou Fishing & Hunting Club et al.* v. *United States*, and which were offered in evidence and constitute part of the record in these suits, should be deemed and considered as a part of the record on appeal (*No. 160, 399*).

The pleadings in each case are substantially the same. The bills of complaint allege that prior to December 15, 1908, the United States was the owner, as a part of the public domain, of the respective tracts of land which were then unsurveyed, but which had thereafter been surveyed under the direction and with the approval of the Secretary of the Interior, as shown by a plat approved by the Commissioner of the General Land Office on March 28, 1917. It is alleged that in order to conserve the public interest the land was withdrawn from settlement, entry, or other form of appropriation by order of the President issued December 15, 1908, and that the withdrawal was ratified and continued in effect by another order

dated July 2, 1910. Alleging that defendants had drilled oil wells upon the tracts in violation of the withdrawals, plaintiff prayed for an injunction, discovery, accounting, etc. The tracts in suit lie between the traverse lines of Warren's survey of 1839 and the mean high-water mark of Ferry Lake, as established by the survey of Kidder, supervisor of surveys, approved March 20, 1917. Each lot was in place as high land when Louisiana was admitted into the Union, and in 1839, when the Warren survey was made.

The tracts in suit are situated in T. 20 N., R. 16 W. A body of water known as Ferry Lake lies partly within this township. The areas in question are lands lying between the so-called meander line of the 1839 survey and the mean high-water mark as it existed when Louisiana was admitted into the Union in 1812 and when the Warren survey of 1839 was made. The adjoining land, embraced in the Warren survey, was patented by the United States to various patentees, the defendants in some of the cases deraigning title from these patentees and in other cases not. The dates of these patents will be given later.

The lots in question were not, as the Government contends, included or described in the patents, and the United States has not parted with title. These lots are represented upon the plat made by Kidder, supervisor of surveys, known as the supplemental plat, approved by the Commissioner of the General Land Office on March 20, 1917.

As already stated, the township was surveyed in 1839 by Warren. In 1846 Morse, in adjusting the boundary line between Louisiana and the then Republic of Texas to the township, made a resurvey of sections 5, 8, and 17, the boundary line just mentioned running only a short distance east of the west line of the township. That survey, however, is not involved in these suits. In 1854 Boyd made a resurvey of certain portions of sections 31 and 32, comprising 90.41 acres, which had been omitted from the Warren survey; but these lands likewise are not here involved. In 1871 Bristol surveyed certain lands in sections 4, 9, and 10, aggregating 280.12 acres, which also had been omitted from the Warren survey. In 1916–17 Kidder, under instructions from the General Land Office, also surveyed an additional 617.21 acres in this township, which had been omitted from the previous surveys. The total area left out of the Warren survey was 987.77 acres. In addition to this he left out 59.90 acres, but the area was so small that Kidder did not think it proper to include the omitted ground in his survey of 1916–17.

The suits do not affect the bed of Ferry Lake. The property involved consists of uplands, which never formed a part of the bed of the lake. Many of the facts are stipulated (No. 160, 95).

We think it can with truth be said that the following facts are conclusively established:

1. That Warren in his survey of the township omitted 987.77 acres of high lands which were in place at the time of his survey, but were returned on

his map as *water*, when in reality they were of the same character and quality as the *lands* he actually surveyed and in many instances higher in elevation than the lands included within his lines.

2. That the areas so left out lie between his so-called meander line and the real shore of the lake.

3. That all of such areas are above the mean high-water elevation of Ferry Lake as it existed in 1812 and 1839 (the 173.09 foot contour), which elevation was known to and recognized by Warren in his survey of other portions of the township.

4. That at the time of Warren's survey the lake did not occupy, with respect to the tracts in suit, the position represented on Warren's plat.

5. That Warren's traverse was not, as a matter of fact, an accurate survey of the meanderings of the water course; that it did not show the place of the water course and its sinuosities; and that it is false and misleading in that it does not afford any accurate means of ascertaining the quantity of land in the fractional sections which were patented to the patentees.

6. That the Kidder survey, which was made under the direction and with the approval of the Department of the Interior, is correct.

As already indicated, five cases in all were consolidated, four of which are now before this court. Some of the facts in these four cases require separate treatment. We accordingly take them up in the order they are numbered.

This suit involves lot 1 of section 3, containing 5.67 acres, claimed by the Government to have been omitted from the Warren survey of 1839. The defendants Lane and Producers Oil Company asserted that title passed from the United States to Louisiana as swamp and overflowed lands under the acts entitled "An act to aid the State of Louisiana in draining the swamp lands therein," approved March 2, 1849, and "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," approved September 28, 1850 (18, 42). No proof, however, was introduced showing that the lands ever passed from the United States to Louisiana. The uncontradicted evidence was that the lands were not swamp. Indeed the parties in effect stipulated that this was the fact (97). The Producers Oil Company also alleged, in the alternative, that if title did not pass to Louisiana, nevertheless the United States had parted with title in consequence of a patent issued to the heirs of John Russell on September 26, 1906, embracing certain subdivisions in section 3 (24). Lane likewise adopted this answer (44). The patent was introduced in evidence (235, 273), and there was also introduced in evidence a lease (275) in favor of the Producers Oil Company, bearing date October 8, 1910, signed by various parties; but there was no proof that they were Russell's heirs. The Producers Oil Company apparently recognized that the oil in controversy was not

located within the limits of the patented lands, for no royalty was ever paid under the lease just mentioned. On the contrary, royalty was paid under a lease the validity of which depended on title flowing from the State of Louisiana (237, 291, 293, 299). In fact, it was stipulated that the oil from the land in controversy was taken into the pipe line of the Texas Company and sold for the account of the Producers Oil Company, the Board of Commissioners of the Caddo Levee District, and Lane (211). All of this is significant as showing an admission on the part of these parties that the land in controversy was not included within the limits of the patented area. A stipulation was entered into recognizing the accuracy of Kidder's survey and embracing certain other facts (95). With respect to the meander line run by Warren in his survey of 1839 Leverett testified there was no geological or other evidence indicating that it was run along the shore of any lake, stream, or watercourse (108–110). Cowles gave similar testimony (115–116). Janes also gave similar testimony (120). Clement, a Government surveyor, likewise testified that Warren's meander line does not represent the border of any water area, lake, or other watercourse; that it does not follow the contour and can not be construed as being a true meander of any body of water; that it is incorrect if it was intended to represent the meander line because it does not follow the contour of a lake, or the sinuosities of a stream, or of any body of water or watercourse;

that it does not follow the configuration of the shores of Ferry Lake or Jeems Bayou or any other watercourse (129).

Q. I will ask you to state whether as a fact the incorrectness of the Warren so-called meander line about which you have testified is or is not as a matter of fact apparent.

A. It is apparent (129).

Kidder, the Government supervisor of surveys, stated that there was no evidence of a bank of any kind or anything to indicate a body of water along Warren's meander line (164, 170).

Q. If it was intended to represent the meander line of Jeems Bayou or Ferry Lake or any other stream or water course, state what is your opinion as a surveyor as to its correctness or not.

A. I would say that it is absolutely incorrect.

Q. State whether or not the error was apparent or manifest, in your opinion as a surveyor.

A. That error was apparent and manifest and was observable the moment the eye sighted along his traverse in that place (170).

Q. I will ask you to state whether, in your opinion as a surveyor, there is anything in the topography of the country, or was at the time of the Warren survey, excusing or justifying the running of the line or the elevation at which it was run.

A. Nothing whatever (171).

It is true, however, that both Clement and Kidder testified that the area of water included in Warren's survey exceeded by about three acres the land omitted from the latter's survey (143, 196). It is also true that the plat of Warren's survey reveals the tract in question, as well as all the other tracts in the various suits, as bordering on Ferry Lake (194).

No. 161, United States v. *Gulf Refining Co.*

This suit involves lot 1 of section 24, containing 11.49 acres. The defendant in its answer deraigns title from the State of Louisiana (12). It alleges the property to be a part of the bed of Ferry Lake, a navigable body of water, the title to the bed passing to the State on her admission to the Union; but in the alternative it is alleged that if title did not pass in this way, the State, nevertheless, acquired the same by the act of Congress of March 2, 1849, granting to Louisiana all swamp and overflowed lands within its area, the tract, it is alleged, being of this character (13). In the alternative, it is alleged that if title did not pass in this way, then the United States parted with its title by virtue of a patent issued on April 4, 1843, to James Shinick, embracing fractional section 24, and that the land in controversy is a part of the patented area. The patent was introduced in evidence (No. 160, 240; No. 161, 20). The defendant, however, in no way connected itself with the title of the patentee. On the contrary, as just stated, it deraigned title under the

State of Louisiana (No. 160, 240, 241; No. 161, 21, 26). No evidence was introduced showing that title passed to Louisiana. The stipulation entered into (No. 160, 95) precludes the defense that the land was ever a part of the bed of Ferry Lake, or that it was swamp or overflowed land. Of course the Government is not entitled to recover if title passed to the patentee, but this evidence is referred to as indicating an admission on the part of the defendant that the tract in dispute was never included within the patented area.

The testimony of Leverett, Cowles, Janes, and Clement, already referred to, is applicable here. Clement's testimony that the incorrectness of the Warren so-called meander line is apparent is applicable to all of the suits. He also described the character of the Warren meander line, and in speaking of a portion of the line he says that it "fails to follow the contour or shore of Ferry Lake; it does not represent a meander line of the lake or follow the sinuosities of any stream or watercourse" (No. 160, 30). He also testified that Warren's meander line at places projects into the lake, and that there is perhaps as much water included in the Warren survey as omitted land (No. 160, 142–143). In speaking of the Warren meander line through this section Kidder testified that it was run without regard to the contour of Ferry Lake; that it is a very incorrect line between angle points 5 and 7; that this portion of the line results in the exclusion

of the area involved in this suit; that the error is a manifest one, for reasons given (No. 160, 186).

No. 162, United States v. *Southwestern Gas & Electric Company et al.*

This suit involves lot 1 of section 13, containing 27.87 acres. The defendants deraign title under a homestead patent issued on November 11, 1901, to Robert L. Gilbert embracing the east fractional half of section 13 (14). The patent and the various deeds were introduced in evidence (28, 31, 32). The testimony of Leverett, Cowles, Janes, and Clement, already referred to, is also applicable here. Clement also testified that Warren's meander line across this section "goes over a high hill at a considerable distance from the true shore of Ferry Lake, reaching a maximum elevation of about 12 or 13 feet above the 173.09 foot contour" (135). The highest point of land in the area in dispute is 23 feet above the elevation of Ferry Lake (136). Kidder described the meander line in detail (No. 160, 179–184), and then testified:

> Q. I will ask you to state whether the Warren meander line referred to follows the contour of Ferry Lake?
>
> A. It does not.
>
> Q. Does it parallel the border of the lake?
>
> A. Not through lot 1.
>
> Q. State whether or not, in your opinion as a surveyor, it was run without reference to the contour.

A. That is very apparent, that it was run without reference to the contour.

Q. In your opinion as a surveyor and your knowledge of the topographic situation, state whether or not the so-called traverse line referred to is or is not correct.

A. At the traverse line, or that portion that segregates lot 1 of section 13 from the fractional section 13, as surveyed by A. W. Warren, is absolutely incorrect as a meander line.

Q. State whether the error is apparent and manifest.

A. The error is manifest (No. 160, 184).

No. 163, United States v. *Gulf Refining Co.*

This suit involves lot 7 of section 10, containing 12.72 acres. The defendants Walling and Crude Oil Company were dropped from the suit (57), leaving only two defendants, Natalie Oil Company and Gulf Refining Company, both of whom deraign title under a patent issued by the United States on July 3, 1897, to Thaddeus W. Marshall, embracing the west half of the northeast quarter and lot 5 of section 10 (13). The patent was introduced in evidence (39) and an abstract of title (No. 160, 241).

The testimony given by Leverett, Cowles, Janes, and Clement, already referred to, is likewise applicable here. Kidder described how he retraced Warren's meander line in this section (No. 160, 172–178). He then continued:

Q. Now, Mr. Kidder, I will ask you to state whether or not in running that portion of the

meander line referred to, Warren departed from the lake at a point approximately on the mean high-water elevation, and returned to the lake on his last course at the mean high-water elevation?

A. Yes, sir; he did.

Q. What have you to say, in your opinion as a surveyor and from your knowledge of the line itself, as to the correctness or incorrectness of the traverse line of Warren, about which you have been talking?

A. I would say, from a surveyor's point of view, that Warren's traverse line segregating lot 7 of section 10 from the fractional south half of section 10, as surveyed by A. W. Warren, does not comply with the requirements of a meander line in any particular, and that it is an error and that the error is obvious, as soon as that line was retraced on the ground, and the error is very apparent.

Q. If intended as a meander line, I will ask you to state if the error is apparent and manifest.

A. It is. (No. 160, 178.)

There is one peculiarity about this suit which is not common to the others; or, if common to the others, not in such a remarkable degree. It is to be borne in mind that Warren in 1839 surveyed the whole of township 20. Boyd resurveyed a portion in 1854, located in sections 31 and 32. He found that Warren had omitted 90.41 acres of upland in these sections, and accordingly surveyed them. Bristol also made, in 1871, a resurvey of portions of sections 4, 9, and

10. He found that Warren had omitted 280.12 acres in these sections, and accordingly included them in his survey. When Kidder resurveyed the whole township he found that Warren had omitted another 617.21 acres, and accordingly these were included in Kidder's survey of 1916–1917. The total therefore of all of the areas omitted by Warren in this township is 987.71 acres (No. 160, 148). Kidder also found that Warren had omitted another 59.90 acres of upland, lying between Warren's meander line and the actual shore of Ferry Lake; but, as Kidder testified, "the area is negligible, absolutely no apparent error in the Warren survey, and the strip makes up the land that in ordinary practice emanates to the riparian proprietors under their rights" (No. 160, 149). He added, with respect to the 59.90 acres, that "there is no manifest error in that part of the line as it agrees with the contour of the lake" (No. 160, 149). The total area, therefore, of the upland omitted in Warren's survey is 1,047.67 acres. Deducting, however, the 59.90 acres which Kidder described as negligible, we have left 987.77 acres of upland omitted in the Warren survey. Of this amount 280.12 acres, which were included in the Bristol survey of 1871, are located in a compact body in sections 4, 9, and 10 (No. 160, 148). The area in section 10 omitted from the Warren survey of 1839 is 193.13 acres (No. 160, 179). The land involved in this suit, No. 163—lot 7 of section 10, containing 12.72 acres—comprises in reality a part of the 193.13

acres in section 10, and a part of the 280.12 acres in sections 4, 9, and 10. It is separated from the other acreage by a small tract shown on the Warren survey of 1839.

Case No. 119, *Jeems Bayou Fishing & Hunting Club et al.* v. *United States*, involves lots 8, 9, and 10 of section 10, containing 85.22 acres, omitted from both the Warren survey of 1839 and the Bristol survey of 1871. The Court of Appeals, in affirming the decree of the lower court, thought that the area omitted was so great as to justify a decree in favor of the United States. Although the area involved in the suit now under consideration was in addition to the area just mentioned, the two tracts being separated only by the tract referred to, the Court of Appeals nevertheless decided against the Government.

The report of the master, to whom the cases were referred, was favorable to the United States (No. 163, 91). The master, however, allowed defendants to deduct from the value of the oil the costs of drilling and operating the wells. Both parties took exceptions, the Government on the ground that the costs of drilling and operating should have been disallowed; the other parties on the ground that the master was in error in finding title in the United States. The District Court overruled all exceptions and confirmed the report (No. 160, 357). Decrees were accordingly entered in each case, the form of the decree in No. 160 (361) being typical of the others.

Both parties appealed to the Circuit Court of Appeals. That court, reversing the decree of the District Court, directed that the bills of complaint be dismissed, and that the Government's cross-appeals be dismissed too (No. 163, 92). The United States prosecuted appeals to this court, the assignments of error in No. 160 (396) being typical of the other cases. These assignments, which it will be unnecessary to reproduce in full, represent substantially the following two matters:

ASSIGNMENTS OF ERROR.

1. That the Court of Appeals was wrong in deciding that the various patents issued by the United States carried title to the margin of Ferry Lake, and therefore included all of the lands in dispute; the Government contending that the title of the various patentees stopped at the so-called Warren meander line and did not extend beyond that line to the margin of the lake.

2. That if the United States is entitled to prevail the defendants are not entitled, as the District Court held, to be credited with the cost of *drilling* the wells. Unlike the assignments of error before the Court of Appeals, the Government does not, in this court, attack the ruling of the District Court in allowing the defendants credit for the cost of *operating* the wells. (No. 160, 396.)

The Government's contention, in brief, is that all of the tracts in controversy were, prior to the survey, approved March 28, 1917, unsurveyed public

lands, then and now constituting part of the public domain. The defense is that the lots, as a matter of law, form a part of the patented lands and that the patents convey title to the margin of the lake.

ARGUMENT.

THE GENERAL RULE IS THAT A LAKE OR WATER-COURSE SHOWN ON THE PLAT OF SURVEY IS THE MEANDER BOUNDARY, AND THAT THE PATENT CONVEYS TITLE TO THE WATER'S EDGE AND NOT BEYOND TO THE MEANDER LINE. BUT THIS COURT HAS ON FREQUENT OCCASIONS RECOGNIZED EXCEPTIONS TO THE RULE, AND WE BRIEFLY CALL ATTENTION TO THOSE EXCEPTIONS.

Horne v. *Smith*, 159 U. S. 40. In this case the government plat represented fractional sections as bordering on a named *river*. As a matter of fact, the water bordering on the fractional sections was not a river but a *bayou*. Between the bayou and the river was a tract of ground, 600 acres in extent, which the plaintiff claimed to own by virtue of the patents to the fractional sections. The river was, in fact, a mile beyond. This court held that title under the patents stopped at the *bayou*.

Niles v. *Cedar Point Club*, 175 U. S. 300. In this case a meander line was run by the Government surveyor. Both the field notes and the plat showed a "marsh" and "impassible marsh and water" lying beyond the meander line. It was held that a patent to the fractional sections bordered by this

meander line did not carry title beyond to the shore of Lake Erie.

French-Glenn Live Stock Co. v. *Springer*, 185 U. S. 47. Both the field notes and the plat represented Malheur Lake as bordering on certain fractional sections. Asserting that the patents thereto operated to convey title to the water's edge and therefore gave riparian rights to whatever land in front was left dry by the recession of the lake, the plaintiff, deraigning title under these patents, sued to recover possession of the land thus left dry. The jury having determined by its verdict that the lake never existed in front of these fractional sections, this court, overruling the contention that the field notes and the plat were conclusive, held that title under the patents stopped at the so-called meander line.

Security Land & Exploration Co. v. *Burns*, 193 U. S. 167. The exterior lines of a township were surveyed, but with one small exception no survey was made of the interior. The survey was in fact fraudulent. The plat based upon this survey represented certain fractional sections as bordering on a lake when in fact the lake was nearly a mile away. It was held that patents to the fractional sections did not pass title to the large area lying between the so-called meander line and the actual shore of the lake.

Chapman & Dewey v. *St. Francis*, 232 U. S. 186. A township plat of survey indicated an unsurveyed

area of approximately 800 acres, designated thereon as "Sunk Lands." This area was meandered as though it were a lake when in fact it was only temporarily overflowed. It was held that a patent granting the township to Arkansas under the swamp land act did not operate to pass title to the part thus erroneously designated on the plat as a lake.

Producers Oil Co. v. *Hanzen*, 238 U. S. 325. The official plat, based upon a survey in 1871, showed two lines in close proximity to each other, one representing the surveyor's traverse lines and the other the shore of a bayou. To use the language of this court, the plat "is very small and does not indicate with certainty whether traverse lines or the stream constitute" the boundary. In describing one of the courses, the field notes recited that at a designated point a "spur of marsh extends out north." While recognizing the general rule that patents to fractional sections bordering on a navigable stream carry title to the water's edge, it was held that the circumstances just referred to, as well as others mentioned in the opinion, such as the discrepancy between the number of acres designated in the patent and the area in dispute, took the case out of the general rule.

Lee Wilson & Co. v. *United States*, 245 U. S. 24. In this case it was held that although the Government survey indicated a lake, 853.60 acres in extent, within the township, the Government, nevertheless, in patenting the township to the State of Arkansas,

did not part with its title to the 853.60 acres, the lake itself being a myth and the survey a mistake in this respect.

WE NOW COME TO THE MAIN CASES IN WHICH THIS COURT HAS HELD THAT A PATENT TO LAND BORDERING ON A STREAM CARRIES TITLE TO THE WATER'S EDGE.

Railroad Co. v. *Schurmeir*, 7 Wall. 272. Here the Government surveyor in surveying a fractional lot, triangular in shape, began at a certain corner and ran south along the section line to a point intersecting the bank of the Mississippi River, where a meander post was set. He then went back to the beginning point and measured east along another section line until he struck the river again, where another meander post was set. He then measured along the stream between the two meander posts. The official plat, based upon this survey, did not portray the meander line, but merely the edge of the river. No reference was made either in the field notes or on the plat to a small island 90 feet wide and 160 feet long lying in front of the lot. It was held that the patent conveyed title to the water's edge, and that the edge of the river was on the *farther* side of the island, where the main channel flowed. Said the court:

> In preparing the official plat from the field notes, the meander line is represented as the border line of the stream, and shows, to a demonstration, that the water course and not

the meander line, as actually run on the land, is the boundary.

Mitchell v. *Smale*, 140 U. S. 406. In this case a patent was issued to a fractional quarter of a fractional section, containing 4.53 acres. Both the field notes and the plat based thereon showed that the lake bordering upon this fractional section was meandered. There was, however, a tongue of land, containing 25 acres, extending into the lake. While it was held that under the circumstances shown the patent operated to pass title to the water's edge and therefore to include this area, the court was nevertheless careful to say:

> We do not mean to say that in running a pretended meander line the surveyor may not make a plain and obvious mistake, or be guilty of a palpable fraud; in which case the Government would have the right to recall the survey and have it corrected by the courts, or in some other way. Cases have happened in which, by mistake, the meander line described by a surveyor in the field notes of his survey did not approach the water line intended to be portrayed. Such mistakes, of course, do not bind the Government.

But the court continued:

> In the present case it can not be seriously contended that any palpable mistake was made, or that any fraud was committed, by the surveyor who made the survey in 1834–5.

IN THE LIGHT OF ALL THE CASES MENTIONED WE MAINTAIN THAT THE SO-CALLED WARREN MEANDER LINE FORMS THE BOUNDARY OF THE PATENTED AREAS AND THAT THE PATENTS DO NOT CARRY TITLE TO THE WATER'S EDGE.

The field notes of Warren's survey were sent up in the original and bound with certain plats. There is no call in the *field notes* showing that Warren in running his so-called meander line followed the margin of Ferry Lake. The field notes give evidence of the fact that Warren ran his *section* lines to the lake, and the testimony shows that such section lines were, in practically every instance, terminated upon the 173.09 contour. There are references in the notes to the running of "traverses" in front of certain sections. These traverses, as the evidence shows and the master found, did not denote the banks of the lake or any other body of water and did not even approximate the contour. These traverses do not represent the shape or configuration of the shore line and were not run, as the master found, with reference to the banks of the lake. There is nothing in the *notes* which shows affirmatively that the traverse followed the margin of the lake. The proof shows the contrary. The lines were run through the hills without regard to a body of water.

In *Railroad Co.* v. *Schurmeir, supra,* the court in its statement of the case said:

> There is apparently no law which requires what is hereafter spoken of and called the

> "meandering" of water courses; but the acts of Congress above referred to do require the contents of each subdivision to be returned to, and a plat of the land surveyed, to be made by the surveyor general; and this makes necessary an accurate survey of the meanderings of the water course, where a water course is the external boundary; the line showing the place of the water course and its sinuosities, courses, and distances is called the "meander line" (p. 274).

Again, at p. 286:

> Meander lines are run in surveying fractional portions of the public lands bordering upon navigable rivers, not as boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of the land in the fraction subject to sale, and which is to be paid for by the purchaser.

Measured by the definition just set forth Warren's so-called meander line is not one in fact, because:

1. It is not "an accurate survey of the meanderings of the water course."
2. It does not show "the place of the water course and its sinuosities."
3. It does not define "the sinuosities of the banks of the stream."
4. It is false, erroneous, and misleading in that it does not afford any reliable means "of ascertaining the quantity of the land in the fraction subject to sale, and which is to be paid for by the purchaser."

In *Gauthier* v. *Morrison*, 232 U. S. 452, it appeared that in 1877, when certain public lands in Washington were surveyed, an area embracing approximately 1,200 acres was by wrongful act or error of the surveyor omitted from the survey and meandered as a lake, when in truth it was not such but was agricultural land susceptible of cultivation. The plaintiff endeavored to take possession of this area, which was still unsurveyed, in order ultimately to acquire a patent under the homestead law; but the defendants claiming title to the same because the patents under which they held embraced lands which the plat designated as bordering on the lake, forced the plaintiff off. In holding that under the pleadings the plaintiff was entitled to an injunction forbidding the defendants from interfering with his possession, the court said:

> So, if the area designated and meandered as a lake was in truth agricultural land susceptible of cultivation, as alleged in the complaint and admitted by the demurrer, it was as much public land after the survey and as much within the operation of the settlement laws as if its true character had been reported by the surveyor. It merely was left unsurveyed.

The court then stated the scope of the opinion with admirable precision:

> It will be perceived that we are not speaking of land which was covered by a permanent body of water at the time of the survey

> and thereafter was laid bare by a subsidence of the water, nor yet of comparatively small areas which sometimes lie within meander lines *reasonably approximating the shores of permanent bodies of water.*

The Government's contention is that Warren's so-called meander line does not reasonably approximate the shore of Ferry Lake. Another fact which must not be overlooked is that in *Hardin* v. *Jordan*, 140 U. S. 371, and in *Railroad* v. *Schurmeir*, *supra*, the *field notes* of both surveys expressly describe the meander line as being along the margin of the waters there involved.

As already indicated, Warren's *field notes* do not disclose that he is meandering the edge of the lake. They do not anywhere state that the line was run along the bank or margin of any body of water. The total area omitted in his survey was 1,047.67 acres, and the master found, correctly we submit, that he made a manifest error in the omission of these tracts. It is impossible to apply to these suits the doctrine announced in *Mitchell* v. *Smale*, *supra*, that the meander line "by its exclusions and inclusions of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream."

We repeat again that in *Railroad Co.* v. *Schurmeir*, *supra*, and *Mitchell* v. *Smale*, *supra*, the field notes themselves affirmatively disclose that the surveyor was meandering a body of water. Warren's field

notes, on the contrary, do not affirmatively disclose that he was doing the same thing. Nowhere does he mention that he is meandering a lake. If, as a matter of fact, this was his intention the field notes do not disclose it. An examination of them will reveal the fact that in running his *section* lines, he terminated them at the edge of the lake, and specifically refers to the establishment of posts at the water's edge to show the corners. This is then followed by a description of his traverse lines. One of the headings, for example, reads "Traverse—Front of Sec. 1." Various subheadings are employed, such as "Front of Sec. 24," "Front of Sec. 13," etc. The official plat, however, of his survey discloses, it is true, Ferry Lake as bordering the lands surveyed. But the official plat is not controlling. The field notes may be resorted to. (*Producers Oil Co.* v. *Hanzen*, 238 U. S. 325.) And as said by this court in *Chapman & Dewey* v. *St. Francis*, 232 U. S. 186, 196:

> Of course, the words in the patent "The whole of the township (except section sixteen)" are comprehensive, but they are only one element in the description and must be read in the light of the others. The explanatory words "according to the official plats of survey of said lands returned to the General Land Office by the surveyor general" constitute another element, and a very important one, for it is a familiar rule that where lands are patented according to such a plat, the notes, lines, landmarks and other par-

> ticulars appearing thereon become as much a part of the patent and are as much to be considered in determining what it is intended to include as if they were set forth in the patent. *Cragin* v. *Powell*, 128 U. S. 691, 696; *Jefferis* v. *East Omaha Land Co.*, 134 U. S. 178, 194. The specification of the acreage is still another element, and, while of less influence than either of the others, it is yet an aid in ascertaining what was intended, for a purpose to convey upwards of 22,000 acres is hardly consistent with a specification of 13,815.67 acres. *Ainsa* v. *United States*, 161 U. S. 208, 229; *Security Land Co.* v. *Burns*, 193 U. S. 167, 180; 3 Washburn on Real Property, 5th ed., 427.

We, therefore, submit that the testimony discloses a palpable mistake on the part of the surveyor and that the circumstances disclosed by the record take the cases out of the general rule that the body of water shown on the official plat constitutes the real boundary of the patented areas.

THIS COURT SEEMS TO BE COMMITTED TO THE DOCTRINE THAT A MEANDER LINE TO BE BINDING MUST REASONABLY APPROXIMATE THE SHORE LINE.

In *Gauthier* v. *Morrison*, *supra*, the language already quoted—

> It will be perceived that we are not speaking of land which was covered by a permanent body of water at the time of the survey and thereafter was laid bare by a subsidence of the water, nor yet of comparatively small areas which sometimes lie within meander lines

> *reasonably approximating the shores of permanent bodies of water—*

seems to be a plain recognition of the fact that the decisions of this court, in applying the general rule already referred to that a stream and not a traverse line is the true boundary, as exemplified in the two leading cases of *Railroad Co.* v. *Schurmeir, supra,* and *Mitchell* v. *Smale, supra,* unmistakably proceed upon the theory that the traverse lines there under consideration did in fact *reasonably approximate the water's edge.* In these cases, however, the undisputed testimony establishes that Warren's so-called meander or traverse line in no sense reasonably approximates the water's edge.

THE FACT THAT IN MITCHELL *v.* SMALE, 140 U. S. 406, THIS COURT HELD THAT A PATENT EMBRACING A FRACTIONAL QUARTER CONTAINING ONLY 4.53 ACRES, NEVERTHELESS OPERATED TO PASS TITLE TO THE WATER'S EDGE AND THEREFORE TO INCLUDE AN ADDITIONAL 25 ACRES, SEEMS TO HAVE MEASURABLY INFLUENCED THE COURT OF APPEALS IN DECIDING AGAINST THE GOVERNMENT. IT IS SUBMITTED, HOWEVER, THAT CASES OF THIS SORT ARE NOT TO BE DECIDED ON A COMPARISON OF AREAS, BUT UPON THE FUNDAMENTAL PROPOSITION WHETHER THE MEANDER LINE REASONABLY CONFORMS TO THE MARGIN OF THE LAKE.

The later decision in *Producers Oil Co.* v. *Hanzen,* 238 U. S. 325, certainly does not proceed upon the theory that cases of this sort are to be determined merely by a comparison of areas. It affords no

basis for the proposition that this court ever intended to lay down the rule that if the area erroneously omitted is no greater than approximately six times the area included, the patent carries title to the water's edge. In that case the area of lot 1, which the patent embraced, was 12.84 acres. The area of the adjoining land in dispute was, according to one survey, 40 acres, and according to another, 87 acres. The discrepancy in acreage was a factor, along, of course, with others, which led this court to the conclusion that the patent did not pass title to the disputed tract. The whole reasoning in that case is inconsistent with the notion that the doctrine to be deduced from *Mitchell* v. *Smale* is that cases of this sort are to be determined by a comparison of areas. The only logical course which this court can take is, we submit, that cases of this sort are to be determined by the application of a simple test—whether the meander line reasonably approximates the margin of the lake.

IF THE COURT OF APPEALS WAS WRONG IN DISMISSING THE BILLS OF COMPLAINT, THEN IT IS SUBMITTED THAT THE DISTRICT COURT WAS WRONG IN ALLOWING THE DEFENDANTS CREDIT FOR THE COST OF DRILLING THE WELLS.

As already indicated, the Government's assignments of error in the Court of Appeals assailed the action of the District Court in allowing the defendants credit for both the cost of *drilling* and of *operation*. The assignments of error in this court simply challenge

the action of the District Court in allowing credit for the cost of *drilling*. Inasmuch as our brief in consolidated cases Nos. 117, 104, 111, 112, 113, 114, 115, and 116 goes exhaustively into the question of the proper measure of damages, we think it unnecessary to repeat the argument here, particularly because some of the counsel appearing in those cases also appear here. The following cases sustain our contention:

United States v. *St. Anthony R. R. Co.*, 192 U. S. 524.

United States v. *Midway Northern Oil Co.*, 232 Fed. 619, 633.

United States v. *McCutchen*, 238 Fed. 575, 593, 594.

St. Clair v. *Cash Gold Min. & Mill. Co.*, 9 Colo. App. 235, 241; 47 Pac. 466, 468.

Hall v. *Abraham*, 44 Ore. 477, 481; 75 Pac. 882, 883.

Martin v. *Porter*, 5 Mees. & W. 351 (1839).

Morgan v. *Powell*, 3 Q. B. 278 (1842).

Llynvi Co. v. *Brogden*, L. R. 11 Eq. 188 (1870).

It is respectfully submitted that the decision of the Court of Appeals should be reversed.

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NOVEMBER, 1922.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

UNITED STATES OF AMERICA,

versus No. 160.

C. W. LANE, ET AL.

UNITED STATES OF AMERICA,

versus No. 163.

GULF REFINING COMPANY OF LOUISIANA, ET AL.,

UNITED STATES OF AMERICA,

versus No. 162.

SOUTHWESTERN GAS & ELECTRIC COMPANY,

UNITED STATES OF AMERICA,

versus No. 161.

GULF REFINING COMPANY OF LOUISIANA.

Appeals from the United States Circuit Court of Appeals, Fifth Circuit.

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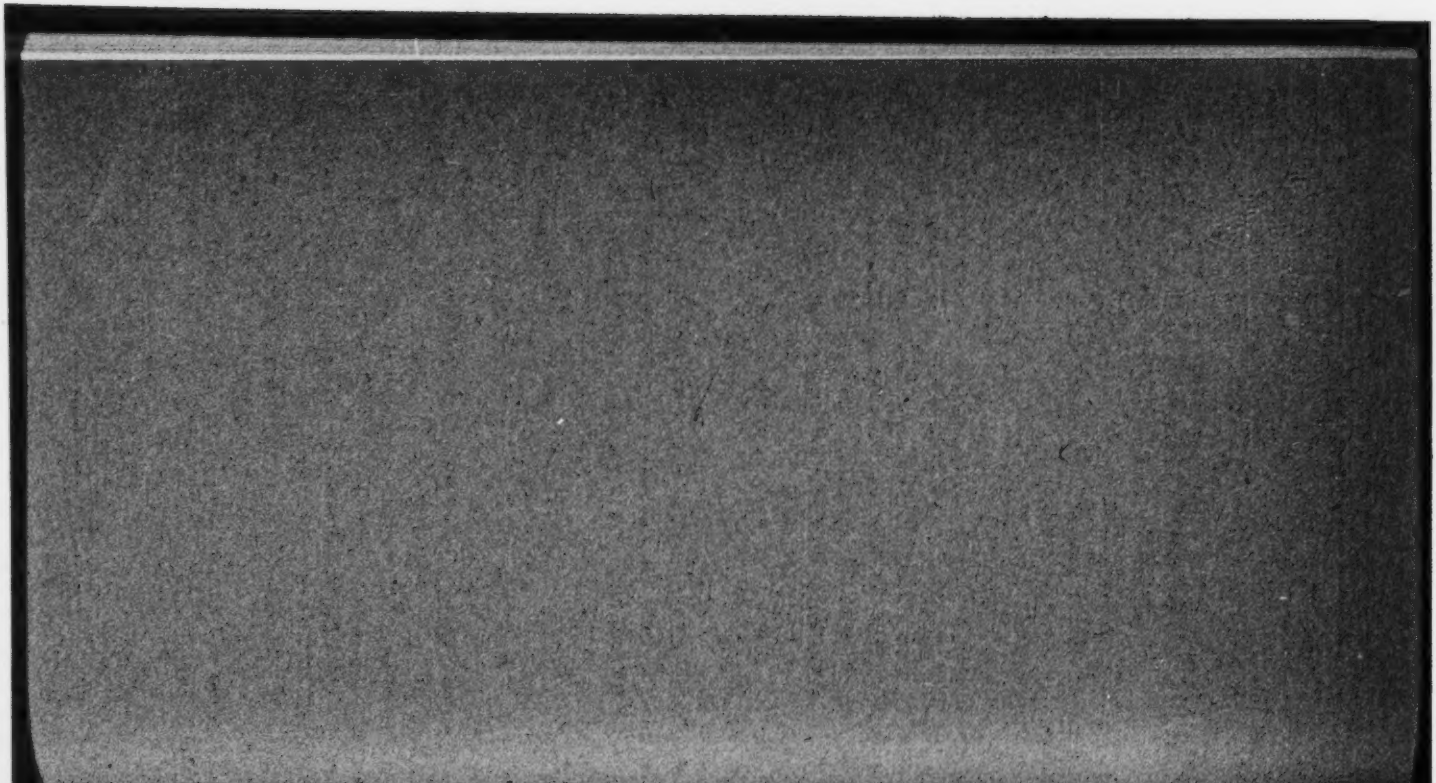

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II.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

UNITED STATES OF AMERICA,

versus No. 160.

C. W. LANE, ET AL.

UNITED STATES OF AMERICA,

versus No. 163.

GULF REFINING COMPANY OF LOUISIANA, ET AL.,

UNITED STATES OF AMERICA,

versus No. 162.

SOUTHWESTERN GAS & ELECTRIC COMPANY,

UNITED STATES OF AMERICA,

versus No. 161.

GULF REFINING COMPANY OF LOUISIANA.

Appeals from the United States Circuit Court of Appeals, Fifth Circuit.

Original Brief for Defendants and Appellees.

These four suits, with others, were brought by the United States, each for the recovery of a small tract of land in Caddo Parish, Louisiana, on which oil had been discovered and produced by the defendants thereon.

Each of the suits involves title to a small area of land, which the Government contends was omitted from the offi-

cial survey in 1839 of the township in which they are located. Combined with such suits are demands for accounting, for judgment for the value of the oil extracted, for injunction and receivership.

The United States had judgment in the District Court in each case, but the Circuit Court of Appeals reversed these decrees and dismissed the bills. The Government has appealed.

STATEMENT OF THE CASE.

Discussion of the issues presented will be facilitated by a brief statement of part of the history of the case before examining the pleadings.

Township 20 North, Range 16 West, Louisiana Meridian, in which township all the tracts embraced in these various suits lie, was first surveyed by A. W. Warren, United States deputy surveyor. His survey showed the existence of a large navigable lake within the township, the official plat of survey showing a number of fractional sections, made fractional by the existence of such lake, into which, of course, surveys could not be extended, since the lake was the property of the State of Louisiana. According to the official plat of survey all these fractional sections were bounded by the waters of the lake, and all of the tracts shown on the Warren plat had been sold prior to the suits, and patented by the United States.

These defendants all possess under such patents up to the waters of Ferry Lake.

In 1913, under instructions of the Commissioner of the General Land Office, a resurvey was made of Township 20 North, Range 16 West, by Arthur D. Kidder, Supervisor of Surveys. Mr. Kidder, after re-establishing the Warren survey, filed a plat, in which he depicted new governmental subdivisions lying between the high water of Ferry Lake as it existed in 1839 and the meander lines shown in Warren's field notes. This plat was approved by the Interior Department, whereupon the Government laid claim to such of these tracts as had proven productive of oil, and these suits followed.

The defense in all of the cases is the same, being, perhaps, a little more elaborate in the answer in No. 163, in which the defendants are sued for what is styled in the bill of complaint, Lot 7 according to the Kidder survey, the defendants holding under a patent from the United States to the fractional S. E. ¼ of Section 10, Township 20 North, Range 16 West (Record in No. 163, page 13):

> "And defendants show that the well in question is located on Lot 5 or the fractional SE¼ of Section 10, Township 20 North, Range 16 West, Louisiana Meridian, as per plat of survey by A. W. Warren, United States deputy surveyor, approved on the 31st day of August, 1839, and on file in the General Land Office of the United States; and that on the 3d day of July, 1897, a patent was issued by the United States to Thaddeus W. Marshall, conveying to said Marshall the full and complete title to all of said fractional SE¼ or Lot 5 of said Secton 10, Township 20 North, Range 16 West, Louisiana Meridian,

according to aforesaid plat and field notes of such survey by A. W. Warren, deputy surveyor, which said plat and field notes showed said tract to be bounded by the mean high water of Ferry Lake, a navigable body of water, and which said patent, accordingly, under the laws of the United States, evidenced the transfer by the United States to said Marshall of the full, complete and perfect title to all of said tract of land, as so bounded by the waters of Ferry Lake. And defendants show that the pretended lot 7, of said section as referred to in the bill of complaint is part of said fractional SE¼ of Lot 5 of said section, conveyed by said patent to said Marshall, as aforesaid, and that it represents an unauthorized, illegal and void attempt by the General Land Office of the United States to survey as public land, property in private ownership, by arbitrarily and illegally claiming the meander line of the lake to be the boundary of defendants' property and to take from defendants in violation of their rights as holding under said patent to Marshall all of that portion of said tract not embraced within the calls of such meander line, which was not run as the boundary of such subdivision but merely to denote the general contour of the lake front thereof."

Such defense is also, in almost the same language, pleaded in the other cases. (See Record No. 162, p. 15; Record No. 161, p. 15; Record No. 160, p. 25.)

The cases were sent to trial before a special master, who, in spite of the fact that the parties had agreed on a statement of facts, permitted the introduction of a large mass of merely cumulative evidence which uselessly incumbers the record. He recommended in all of the cases judgment in

favor of the Government for the lands claimed, but holding that there was no question as to the defendants' good faith in each and every case, recommended that the Government's recovery for the value of the oil should be limited to the value of the oil, less the cost of producing the same.

From a decree of the District Judge, confirming this report, appeals and cross-appeals were taken to the Circuit Court of Appeals, which reversed the decree on defendants' appeals and dismissed the bills.

By agreement of counsel (Record, No. 160, p. 383) it is stipulated that all of the testimony and exhibits common to all of the suits should be copied in the record in suit No. 177 only, making the record in that case part of the record on appeal in each of the other cases. Such agreement appears in each of the other cases. (See Records No. 161, p. 50; No. 162, p. 63; No. 163, p. 72.)

It has also been agreed between counsel that, inasmuch as useless repetition would be thereby avoided and the labor of the Court in examining the records correspondingly decreased, the cases should be discussed in one brief.

ARGUMENT.

But one issue is presented:

Were the tracts of land involved in these cases left out of the Warren survey in 1839?

For the purpose of expediting the trial of the cases and of simplifying the issues and obviating the necessity of

a bulk of testimony it was stipulated (Record No. 160, p. 95) at the time of trial before the Master as follows:

1. That the surveys made herein by Arthur D. Kidder, Supervisor of Surveys, and his associates and assistants, were made under instructions issued by the Commissioner of the General Land Office, as shown by letters of date September 27, 1913, and of December 1, 1916, from Clay Tallman, Commissioner of the General Land Office, to the said Arthur D. Kidder, Supervisor of Surveys, which will be offered in evidence herein by plaintiff, and that said surveys were made conformably to said instructions; that the surveys referred to herein are represented by certain official plats approved July 24, 1916, and March 28, 1917, which will be offered in evidence by plaintiff; that the plats made by the said Arthur D. Kidder, or under his supervision, hereinabove referred to, correctly depict the surveys as made by him, and that all the figures, measurements, courses, distances, elevation and topographic features shown on said plats are correct. It is also admitted that the said Arthur D. Kidder, Supervisor of Surveys, correctly re-established and reproduced the survey made by A. W. Warren, Deputy Surveyor, of Township 20 North, of Range 16 West, in strict accordance with the said original Warren survey, the said original survey being represented upon the official plat approved August 31, 1839.

2. That the contour line of 173.09 feet above mean Gulf level established by the said Arthur D. Kidder, Supervisor of Surveys, as the mean high water elevaton of Ferry Lake

in 1812 when the State of Louisiana was admitted into the Union, and in 1839 when A. W. Warren made his survey of Township 20 North, of Range 16 West, was in reality the mean high water elevation of Ferry Lake and James Bayou, at such dates, and that the meander line of Ferry Lake and James Bayou as run by said Kidder follows said contour of 173.09 feet.

3. That all of the tracts in controversy in these suits lie above the mean high water elevation of Ferry Lake as it existed in 1812 and 1839.

4. That the various tracts of land lying between the meander line of Ferry Lake and James Bayou as run by the said Arthur D. Kidder, and the line represented as a meander line upon the plat of said original Warren survey hereinabove referred to, including the tracts in controversy in these consolidated causes, were in 1812 and in 1839, at all times since said dates, and now are, lands in place and of the same character, geological formation, and quality as the lands surveyed by said Warren as aforesaid; that said tracts of land are now and were in 1812 and 1839 and at all times since said dates, what is known in this locality as hill land covered with native forest trees and vegetation characteristic of hill land, and that all of said lands were at the dates mentioned and at all times subsequent thereto, uplands in character and existed as such at the time of the said Warren survey and in 1812.

5. That the various tracts of land embraced in the extension survey of said Arthur D. Kidder, Supervisor of

Surveys, and represented upon the plats aforesaid, including the property in controversy in these consolidated causes, were not formed by accretion, or by the recession or reliction, of the waters of Ferry Lake or James Bayou since 1812.

6. That Ferry Lake is and was in 1812 and 1839 a navigable body of water.

7. This stipulation shall not be construed as an admission upon the part of defendants that the lands in controversy were not included within the survey made by A. W. Warren, as a matter of law, the defendants contending that under the Warren survey their titles extended to mean high water elevation.

Mr. Kidder, the Supervisor of Surveys, who made the resurvey upon which these suits are predicated, testified as follows (Record No. 160, pages 192, *et seq.)*:

> "Q. In your report, Mr. Kidder, a copy of which I hold in my hand, you made the following statement, which I will read to you:
>
> " 'With only one exception the original section lines as terminated upon the border of Ferry Lake show a proper recognition of the mean high water elevation of the raft period. I would not criticise the surveyor's judgment in the location of but one meander corner in the entire township and the meander lines along the lake front in Sections 1, 5, 8, 11, 17, 20, 26, 28, 31, 33 and 35 are reasonably correct.

"'The faithfulness of the early surveyors deputized by the United States to the performance of the great trust of establishing and marking for all time the lines defining the rights of her land patentees has been well demonstrated by the positive identification and recovery of the original lines after a period far beyond the span of the average human life. The deputy surveyors were called upon to explore and map a wild and remote virgin forest and swamp, to transport themselves and equipment by primitive methods, and to subsist themselves largely by hunting and fishing as best they could.'

"Is that a correct extract from your report?

A. Yes, sir.

Q. Now, the Warren survey was made in 1839?

A. Yes, sir.

Q. At a time antedating the settlement of this part of the country?

A. Yes, sir.

Q. As stated in your report, Warren and his assistants were compelled to transport themselves into a new and unsettled country and to subsist as best they could?

A. That is very true.

Q. At that time, Mr. Kidder, is it not a fact, from your investigation that the land that you claim was omitted from the Warren survey was of little or no value?

A. Yes, sir, that would be my judgment.

Q. The work of these surveys in general features, as you stated in your report, was faithfully and well done?

A. Yes, sir, and that is brought out especially with reference to the section lines.

Q. Furthermore, Mr. Kidder, is it not a fact, that with a remarkable degree of accuracy Warren has located all of his meander posts on or close to the contour line established by you of 173.09?

A. Yes, sir.

Q. So that with respect to the township and range lines, the section lines, corners and all meander posts, the Warren survey is, considering the conditions under which the survey was made, remarkably accurate?

A. Yes, sir."

And attention is called to the fact that the Warren survey, a photographic copy of which plat, plaintiff's 6th offering, is inserted in this brief, shows no meander lines whatever, but merely what Mr. Kidder admits to be a line represented as the border of the lake, following smooth curves rather than straight lines and angles (Record, page 195).

Before discussing these facts and arguing the case therefrom we shall refer briefly to the salient legal principles.

I.

The mode and practice of surveying the public lands are of statutory creation, the rule of surveying in the laying out of governmental subdivisions depending upon acts of Congress. In these acts no mention can be found of meander lines.

Section 2396 of the Revised Statutes (Act of February 11, 1805, Chapter 14, 2 Stat. L., 313) provides:

> "The boundaries and contents of the several sections, half-sections, and quarter-sections of the pub-

lic lands shall be ascertained in conformity with the following principles:

"First. All the corners marked in the surveys, returned by the surveyor-general, shall be established as the proper corners of sections, or subdivisions of sections, which they are intended to designate; and the corners of half and quarter sections not marked on the surveys, shall be placed as nearly as possible equidistant from two corners which stand on the same line.

"Second. The boundary lines, actually run and marked in the surveys returned by the surveyor-general, shall be established as the proper boundary lines of the sections, or subdivisions, for which they were intended, and the length of such lines, as returned, shall be held and considered as the true length thereof. And the boundary lines which have not been actually run and marked shall be ascertained, by running straight lines from the established corners to the opposite corresponding corners; but in those portions of the fractional townships where no such opposite corresponding corners have been or can be fixed, **the boundary lines shall be ascertained by running from the established corners due north and south or east and west lines, as the case may be, to the water course, Indian boundary line, or other external boundary of such fractional township.**

"Third. Each section or subdivision of section, the contents whereof have been returned by the surveyor-general, shall be held and considered as containing the exact quantity expressed in such return; and the half-sections and quarter-sections, the contents whereof shall not have been thus returned,

shall be held and considered as containing the one-half or the one-fourth part, respectively, of the returned contents of the section of which they may make part."

It will be particularly noted that the statutory directions are that the **water course** in the case of a fractional township, such as that with which we are here dealing, and not any arbitrary line, is to be taken as the boundary of the governmental subdivision. That is to say, the statute specifically directs in cases where **water courses** exist, that the natural object shall itself be taken as the boundary; and any proper survey, therefore, must be to the **water course.**

This would be particularly true where, as here, the water course was navigable and, hence, never the property of the Federal Government, and where, the surveyor being deputized to survey the governmentally owned land, finds the property which he is sent to survey bounded by a large body of water, covering land the property of the State, the boundary between which and the property of the United States is a definite natural line, that of ordinary high water.

The main point, however, is that **the statutory directions for surveying require the survey to the water course.** Meander lines along the water course, hence, are not the creatures of statutes; but, as has often been decided by this Court, are run merely for convenience by the surveyors for the purpose of defining generally the sinuosities of the banks of the water course, which by the statute, constitute the true boundary.

In *St. Paul & P. R. Co. v. Schurmeier, 7 Wallace, 272,* it was said:

> "Meander lines are run in surveying fractional portions of the public lands bordering upon navigable rivers, not as boundaries of a tract, but for the purpose of defining the sinuosities of the banks of a stream, and as the means of ascertaining the quantity of the land in the fraction subject to sale, and which is to be paid for by the purchaser. In preparing the official plat from the field notes the meander line is represented as the border line of the stream, and shows to a demonstration that the water course, and not the meander line as actually run on the land, is the boundary."

In *Hardin v. Jordan, 140 U. S., 371:*

> "The meander lines run along or near the margin of such waters are run for the purpose of ascertaining the exact quantity of the upland to be charged for, and not for the purpose of limiting the title of the grantee to such meander lines. It has frequently been held, both by the Federal and State Courts, that such meander lines are not intended for the purpose of bounding and abutting the lands granted upon the waters whose margins are thus meandered; and that the waters themselves constitute the real boundary."

Mitchell v. Smale, 140 U. S., 406:

> "The pretense for making such surveys (referring to resurveys such as made here by Kidder), arising from the fact that strips and tongues of land are found to project into the water beyond the meander line run for the purpose of getting its general con-

tour, and of measuring the quantity to be paid for, will always exist, since such irregular projections do always, or in most cases, exist. The difficulty of following the edge or margin of such projections, and all the various sinuosities of the water line. is the very occasion and cause of running the meander line, which by its exclusions and inclusions of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream. **The official plat made from such survey does not show the meander line, but shows the general form of the lake deduced therefrom, and the surrounding fractional lots adjoining and bordering on the same. The patents when issued refer to this plat for identification of the lots conveyed and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream."**

Again:

"The existence of such projecting tongue is entirely consistent with the water or lake being the natural boundary of the plaintiff's land, which would include the said projection, if necessary, in order to reach the said boundary. It has been decided again and again that the meander line is not a boundary, but that the body of water whose margin is meandered is the true boundary."

Producers Oil Company v. Hanszen, 238 U. S., 339:

"They (the authorities) unquestionably support the familiar rule relied on by counsel for the oil

> company that, in general, meanders are not to be treated as boundaries, and when the United States conveys a tract of land by patent referring to an official plat which shows the same bordering on a navigable river, the purchaser takes title up to the water line."

With this established principle in mind, we deem it necessary to refer only briefly to the salient facts of the several cases.

In 1839 Township 20 North, Range 16 West, was surveyed by A. W. Warren, United States Deputy Surveyor. The official plat exhibits an area of 10,328.09 acres returned as surveyed. With respect to this survey, Mr. Kidder's report in connection with his original investigation shows (Record, page 193):

> "With only one exception the original sectional lines as terminated upon the border of Ferry Lake show a proper recognition of the mean high water elevation of the raft period. I would not criticise the surveyor's judgment in the location of but one meander corner in the entire township; and the meander lines along the lake front in Sections 1, 5, 8, 11, 17, 20, 26, 28, 31, 33 and 35, are reasonably correct.
>
> "The faithfulness of the early surveyors deputized by the United States to the performance of the great trust of establishing and marking for all time the lines defining the rights of her land patentees has been well demonstrated by the positive identification and recovery of the original lines after a

period far beyond the span of the average human life. The deputy surveyors were called upon to explore and map a wild and remote virgin forest and swamp, to transport themselves and equipment by primitive methods, and to subsist themselves largely by hunting and fishing as best they could."

* * * * * * *

"Q. The work of these surveyors in general features, as you stated in your report, was faithfully and well done?

A. (Page 82). Yes, sir; and that is brought out especially with reference to the section lines.

Q. Furthermore, Mr. Kidder, is it not a fact, that with a remarkable degree of accuracy Warren has located all his meander posts on or close to the contour line established by you of 173.09?

A. Yes, sir.

Q. So that, **with respect to the township and range lines, the section lines, corners, and all meander posts, the Warren survey is, considering the conditions under which the survey was made, remarkably accurate?**

A. **Yes, sir.**"

Any attempt, therefore, to impeach the general accuracy of Warren's survey, either for fraud, gross error, incompetency or carelessness, must necessarily fail.

Mr. Kidder, the Government's chief witness, admits that all of Warren's township and section work was carefully and properly done; and, furthermore, admits that wherever Warren purported to set a meander post upon the banks of Ferry Lake such post was set with a remarkable degree

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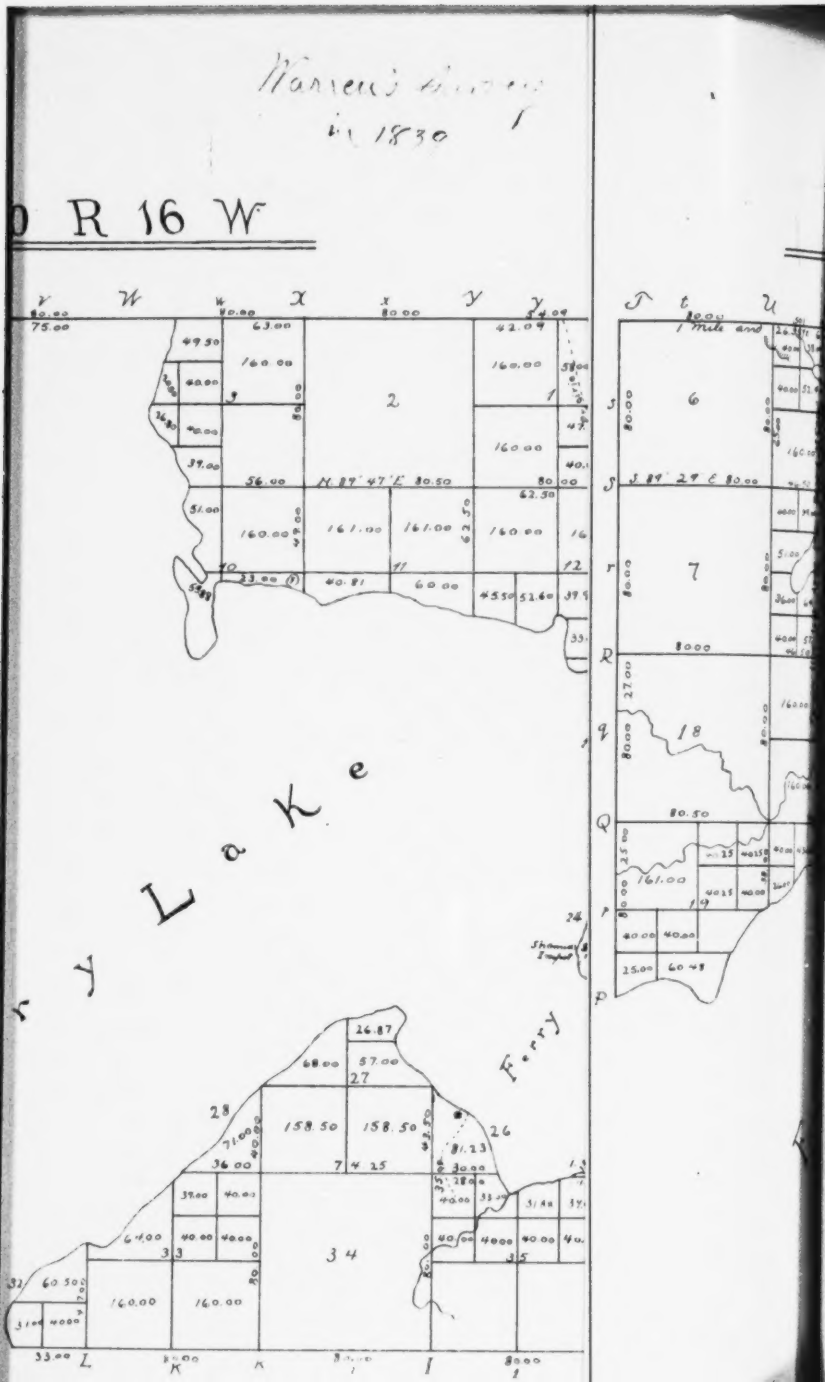
Warren's Survey
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of accuracy, close to the elevation of 173.09 agreed upon as the mean high water at the period of the survey.

Each of Warren's section lines projecting to the lake terminate at a post set by him on this same contour line.

The cases before the Court now concern the small strips or projections intervening between the meander lines as shown by Warren's field notes and the 173.09 contour line denoting the ordinary high water line at the date of Warren's survey. It will be noted, however, that the **official plat** (conformably with the comments of this Court in the cases above cited) **indicates no meander lines, but shows the sinuosities of the lake as the boundary; not as straight lines, but with the natural curves to the banks of such body of water.** (See Exhibit 6, sent up in the original, a photographic reproduction of which is inserted opposite this page.) That is to say, **Warren's plat,** made up from his field notes, **shows the fractional sections as abutting on the lake;** and it is an admitted fact that the exterior lines of all the sections do terminate at the true high water mark.

Considering the fact that the surveys were made in wild territory and that the land at that time was of practically no value, what Warren did was the reasonable and practical thing of approximating the water's edge without consuming the public's time and money in making an overexact retracement of the contour of the high water.

We must eliminate from the consideration of these cases the large areas of land left out, west of the meander line, in Section 10. This was a large body of land which Warren did not pretend to survey, for reasons shown in the transcript in the *Hanszen* case filed in evidence by the Government; that is, he did not attempt or pretend to survey them, stopping at a deep slough then existing.

See dissenting opinion of Mr. Justice Provosty in *Producers Oil Company v. Hanszen, 61 So., 760:*

> "The first survey of T. 20, R. 16, Parish of Caddo, was made in 1839. At that time Ferry Lake occupied the greater part of the township. **The surveyor left out of his survey a small island separated from the mainland by a slough."**

Involved in these consolidated suits are 8.38 acres of land in Section 3 (No. 160); about 7.50 acres in Section 10 (No. 163); 27.87 acres in Section 13 (No. 162); 11.49 acres in Section 24 (No. 161).

With respect to the small area in Section 3, Mr. Kidder admits (page 196) that the Warren survey included an area of lake land larger than the quantity of high land which he claims to have omitted from the survey; specifically, that in the Warren survey, if the meander line is to be taken as the boundary there would be included 10.9 acres of land which never belonged to the United States and there would be omitted 8.38 acres of land which, according to Kidder, should have been included. With respect to this suit, therefore, (No. 160), no lands were omitted

from the survey under any theory of the case, since the Government was paid for **more** land in the subdivision that it ever at any time owned.

The same is true in Section 24, involved in No. 161. (See Record, No. 160, page 198; also see Kidder's resurvey map, plaintiff's exhibit.

Mr. Kidder further testifies (page 203) that, taking the whole of the northern shore of Ferry Lake, including Sections 3, 10, 11, 12, 13 and 24, surveyed by Warren, the area of land lying between the Warren meander line and Kidder's establishment of the 173.09 contour line was 69.56 acres. In other words, that, considering the meander line as the boundary in place of the water's edge, there would have been omitted from Warren's survey an area of 69.56 acres; while the same meander lines included within the survey and showed as land an area actually lying in the lake and never belonging to the Government, of approximately 44 acres. So that, taking the entire strip of meandered line, from its northern intersection with the boundary line of Section 3 to its intersection with the range line at the southeast corner of Section 24, Warren's meander line, which was intended to denote only in a general and reasonably correct way the sinuosities of the water's edge would, if taken as the boundary, reduce the actual acreage of governmentally owned land only by the difference between 69.56 acres and 44 acres, or **25.56 acres.**

Certainly with respect to all this northern shore of Ferry Lake it is far-fetched to say that this trifling area dis-

tributed through six sections in any way militates against the accuracy of Warren's work.

Regarding the entire Warren survey, therefore; considering the fact that it is admitted to have been done with a remarkable degree of accuracy; that the intersections of the exterior lines of the sections with the lake are admitted to have been placed accurately upon the proper high water line; and that the plat of the township shows the sinuosities of the lake and not the meander line as the boundary of the land abutting upon the lake: it follows that the fractional sections adjoining the lake are bounded by the mean high water mark, and not by any meander line. Especially is this demonstrated by the trivial quantity of land that would have been omitted from the survey in the sections here in controversy, had the meander line been intended as the boundary. If this were not true, then it would follow that in no case would any one ever be a littoral proprietor upon any lake in the United States.

II.

There are some exceptional cases in which meander lines have been taken as boundaries, but an analysis of these cases demonstrates that the principles there involved depended upon their peculiar facts, which could have no application to the cases at bar. Such cases are:

Niles v. Cedar Point Club, 175 U. S., 308.

French-Glenn Live Stock Co. v. Springer, 185 U. S., 47.

Chapman & D. Lbr. Co. v. St. Francis Levee District, 232 U S., 186.

Security Land & E. Co. v. Burns, 193 U. S., 167.
Horne v. Smith, 159 U. S., 40.
Gauthier v. Morrison, 232 U. S., 457.
Producers Oil Company v. Hanszen, 238 U. S., 325.
Wilson & Company v. United States, 245 U. S., 24.

Let us see what each of these cases involved.

In the *Niles* case the surveyor had meandered a marsh, shown as such in the field notes and plat. The marsh lay between the meander lines and Lake Erie. The Court held that as the surveyor had deliberately meandered the marsh, as such, the line was run as one of boundary between the marsh and high land and was in no sense a meander of the lake.

French-Glenn case, 185 U. S., 47:

In this case there was no lake at all as represented on the plat. The Court said:

> "While **if there was a lake abutting on or to the north of the lots, the plaintiff in error would take all land between the meander line and the water,** and all accretions, it was competent for the defendant to show that there was not, at the time of the survey, nor since, any such lake and to contend that in such a state of facts, there could be no intervening land and no accretion by reliction."

Chapman & Dewey case, 232 U. S., 186:

The proof showed and the Court held, that there was never any lake such as was pretended to be meandered. The facts were that the surveyor meandered a body of swamp land and called it a lake; and the Court simply held that the surveyor by designating a body of land as "lake" did not convert it from land to water.

> The *Wilson case, 245 U. S., 24,* involved the same state of facts.

Or the *Burns case, 193 U. S., 167:*

> "There was, in truth, no such survey as was called for by the contract between the government and the surveyor. The exterior lines, with the exception of the south line of the township, were run, but no survey of the interior of the township was ever made and no section lines thereof were ever run, with one possible exception, and in truth, the survey as a whole was a fraud. **No such body of water at the place indicated on the plan of survey then existed or now exists.** On the contrary, the lake is from half a mile to a mile away from what is called its meander line on the plat of survey filed by the surveyor. It covers only about 20 acres in the southeast corner of Sec. 4. **The surveyor never was on the ground and never saw the lake he intended to measure, and the lake never existed where he laid it down in his fraudulent survey.** If the side lines of the various lots were protracted in their course, those of Lot 3 would never reach the lake, and those of Lots 5 and 6 would not reach the lake within the limits of Sec. 4, while the south line of Lot 7 would touch the lake, and few feet of frontage

would then be secured, and the lot would then have 139 instead of 25.25 acres. The side lines of Lots 5, 6 and 7, if protracted, would instantly cross the protracted side lines of Lot 3. There are at least 1,000 acres of high, tillable land between the actual water line of the lake and the meander line as returned by the field notes and the plat of survey, and the land is covered by trees of more than a century's growth and growing down to the water's edge. In order to bound on the lake, the lots would exhibit a totally different form from that which they take on the plat of survey and such boundary would violate every rule of statutory survey, by conveying lands not conforming to the system adopted by the government and carried out ever since its adoption."

* * * * * * *

"The fraudulent character of the survey, the non-existence of the lake within at least half a mile of the point indicated on the plat, the excessive amount of land claimed as compared with that which was described and stated in the patents and actually purchased and paid for, the difficulty in reaching the lake at all, and the necessity, in order to do it, of going outside of Section 4 (with the exception as to a small part of Lot 7), the section in which the description and plat placed all the land, all go to show that the lake ought not to be regarded as a natural monument within the cases, or within the principle upon which the rule is founded, and therefore the courses and distances by which the amount of land actually purchased and paid for was determined, ought to prevail.

> "The non-existence of a lake anywhere near the spot indicated on the plat is a strong reason for regarding the so-called meander line as one of boundary instead of a true meander line, and **when the plat itself is the result of a gross fraud, and indeed is entirely founded upon it, the reason for refusing to recognize the lake as a boundary becomes apparent.**"

In *Horne v. Smith, 159 U. S., 40,* the surveyor had meandered a bayou between which and the Indian River there was a large body of land. The surveyor reported that he had meandered Indian River, when, as stated, he did not meander such river, but, instead, the bayou, lying some distance from it. The Court merely held that the bayou, in fact meandered, and not the river which was never meandered, was the boundary.

Gauthier v. Morrison, 232 U. S., 457:

In this case, again, the surveyor meandered a body of high land, calling it a lake. Of course, he could not, merely by calling land "lake", convert it into water or affect the Government's title. The Court said:

> **"It will be perceived that we are not speaking of** land, which was covered by a permanent body of water at the time of the survey and thereafter was laid bare by a subsidence ef the water, nor yet of **comparatively small areas which sometimes lie within meander lines, reasonably approximating the shores of permanent bodies of water."**

The *Hanszen case, (238 U. S., 325)*, held that intrinsic evidence of the field notes showed an intention upon the part of the government surveyor not to treat the water as the boundary, but to survey out a definite acreage; the field notes themselves showing considerable bodies of land lying outside of the meander lines. Intrinsic and extrinsic evidence also showed the intention and purpose to survey a definite body and quantity of land, rather than to survey to the water's edge.

The Court, after laying down the general rule that meander lines are not to be treated as boundaries (**"when the United States conveys a tract of land by patent referring to an official plat which shows the same bordering on a navigable river, the purchaser takes title up to the water line"**) held that "facts and circumstances may be examined and **if they affirmatively disclose an intention to limit the grant to actual traverse lines,** these must be treated as definite boundaries."

Analyzing these cases, it will be seen that the only decisions of this Court in which meander lines have ever been held to be boundaries were in such cases as these:

1. Where the surveyor meandered land and called it water, when no such body of water existed at all.

2. Where the surveyor meandered marsh land lying around a body of water, showing in his field notes that he meandered a marsh as such, and not the water.

3. Where no such body of water existed as shown by the plat at any reasonable distance from the so-called meandered lines.

4. Where intrinsic and extrinsic evidence showed the intention to survey a certain acreage limited by the so-called meander lines, instead of surveying to a water boundary.

5. In case of gross fraud such as was present in the *Burns case*.

To which may be added the case of *Horne v. Smith, supra*, where the surveyor meandered one stream, representing that he had meandered another, in which case the grantee was held to the water boundary of the stream actually meandered.

To say that any of these statements of facts, or the reasons impelling the decisions in such cases, is present in the cases at bar, would be to confess ignorance of the record. There was no fraud. Kidder compliments Warren's work and speaks in the highest terms of its accuracy.

Ferry Lake existed in 1839 and Warren's field notes and plat clearly disclose the intention to make the water line the boundary. Kidder admits and the evidence demonstrates that wherever Warren placed a meander post, whether on the extension of his section lines to the lake or otherwise, the position of such post was with a remarkable degree of accuracy placed on the 173.09 contour line. Nothing in the field notes or in the plat or otherwise discloses the existence of land between the meander line and

the lake; on the contrary, the plat demonstrates conclusively the intention to make the water line the boundary.

All that remains of the Government's contention is that there are small strips of land or projections which were left between the meander and high water mark. This, as the Court pointed out in *Mitchell v. Smale*, is the case in every survey and arises out of the very nature of meander lines, which are intended only to mark with reasonable approximation the general sinuosities and configuration of the water line.

The facts in that case were that a fractional quarter section was shown on the government plat as abutting on the lake and as containing only 4.53 acres. A resurvey was, as here, ordered by the Department and made, and disclosed that between the meander line as run and the actual high water mark of the lake was an area of about 25 acres. So that the fractional quarter section instead of containing 4.53 acres, really contained about 29.53 acres. It was held, however, that the patentee of the fractional quarter section took to the water's edge and that the second survey could not in any manner affect or impair his rights; the Court holding that **since the official plat showed the lake as a boundary, and since there was no proof of fraud or plain and obvious mistake or of intention to run the meander line as the boundary instead of as a meander, that the patent according to the original plat and field notes carried to the water's edge.**

In none of the cases at bar is the excess comparable with that in *Mitchell v. Smale*, and it is submitted that on principle and on authority, these defendants' titles cannot be deprived of their riparian character.

A little reflection over the surrounding circumstances and conditions makes it plain that the only reason why Warren's meander line does not more closely follow the high water mark is that Warren did not consider it justifiable from the standpoint of public time and money to make an absolutely accurate survey of every minute curve in the water's edge. He did project every section line to the water's edge and set his meander posts upon the correct elevation. He ran other lines to the water's edge. In every case he placed his meander corner at the intersection of such line with the bank at the proper elevation. He did not consider it necessary to make a survey between such posts; but simply drew the general contour of the lake between the posts which had been placed accurately at the proper mean high water elevation.

The little strips and tongues that remained outside such meander were negligible; and when one considers that in thus tracing the water's edge, Warren included on the land side of the meander almost as much of lake as he omitted of land on the water side, it will be seen, as respects the cases now before the Court, that the Government could have lost nothing.

These cases are typical of the class of litigation which always arises in the case of the discovery of oil. The little

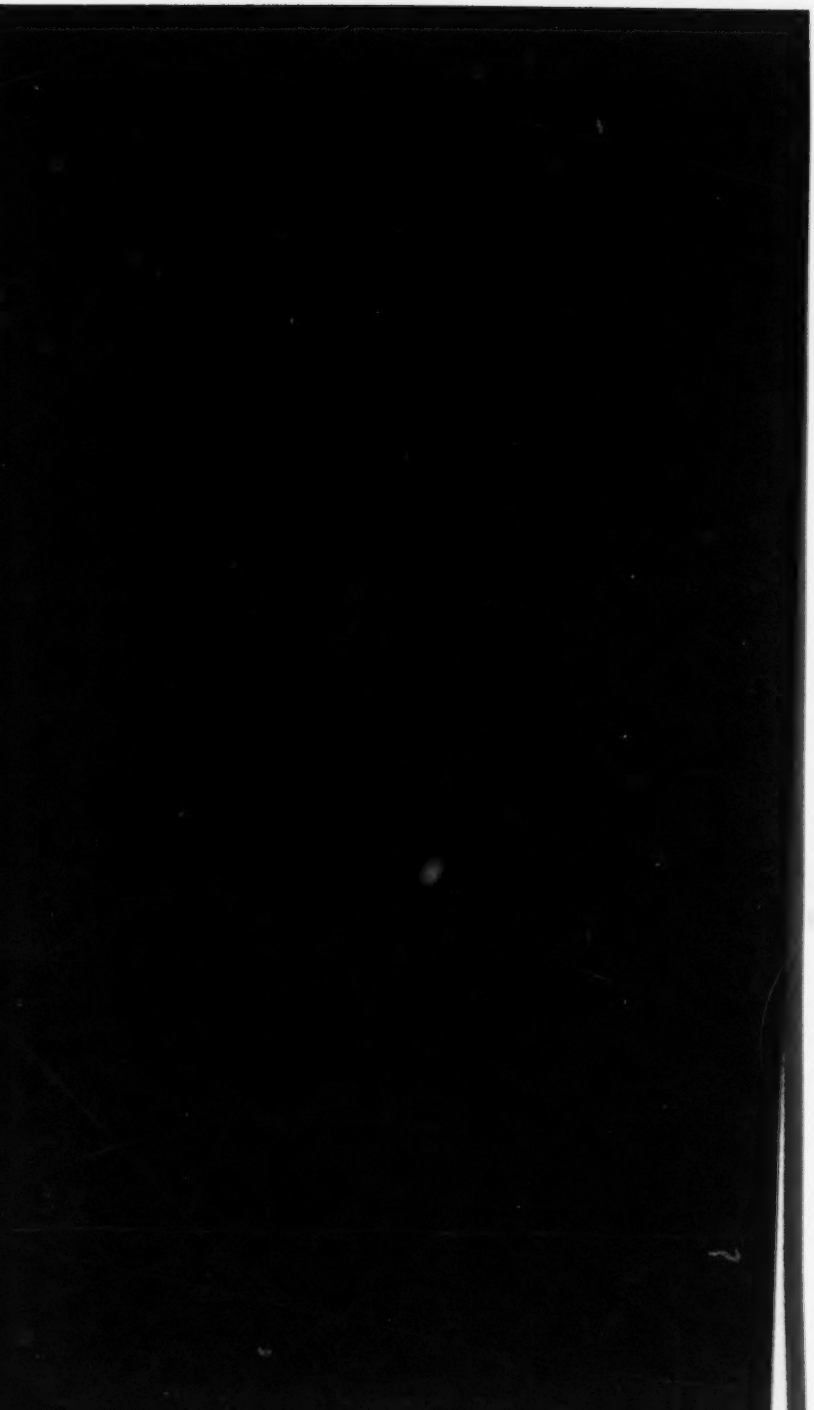
tracts here sued for are in themselves inconsequential and would never have been noticed but for the discovery of oil. The cases deal with a survey made eighty years ago; a survey admitted by the government engineers to have been remarkably accurate when made. **If accurate when made,** considering conditions and instruments, **it still remains accurate,** for neither lapse of time nor improvement in and invention of new instruments for surveying can convert an accurate survey into an inaccurate one. The fact that more accurate work could have been done in 1839 with the instruments **now** in use, or with present conveniences cannot convert that into an erroneous survey, which was a correct and accurate one when made. If those responsible for the institution of this litigation had only considered that the cases had to be dealt with from the standpoint of **1839** and not of **1919,** these suits would never have been brought.

It is with respect submitted that the decree of the Circuit Court of Appeal in each of these cases is correct and should be affirmed.

Respectfully submitted,

S. L. HEROLD,
J. A. THIGPEN,
E. P. LEE,
HAMPDEN STORY,
J. D. WILKINSON,
Solicitors for Defendants.

R. L. BATTS,
Of Counsel.



In the Supreme Court of the United States.

OCTOBER TERM, 1922.

THE UNITED STATES OF AMERICA, Petitioner, *v.* A. C. LOUCKS ET AL. } No 191.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

THE PLEADINGS.

The tract of land involved in this case is lot 1 of section 27. It contains 14.13 acres (60). In its bill of complaint the Government alleged that it owned this land; that the official plat of survey was approved March 28, 1917; that the President, on December 15, 1908, withdrew from settlement, entry, and all other forms of appropriation, all of the public lands in the township in which this section is located, as well as others not here in controversy; that on July 2, 1910, under authority of the act of June 25, 1910 (36 Stat. 847), the previous withdrawal order was continued in full force and effect; that notwithstanding, the defendants, without authority, in bad faith, took possession of the land and drilled a well,

out of which oil and gas were taken; and that this was done under color of a pretended claim of ownership. Appropriate relief was prayed for (3).

In their answer defendants admit the drilling of the well and the extraction of oil, but deny that the land belongs to the United States. On the contrary, it is alleged that on June 1, 1860, the United States issued a patent to Matthew G. Jackson embracing the northeast fractional quarter of section 27; that this patent embraces the land in controversy; and that the defendants deraign title from the patentee. The defendants also allege that the oil taken amounts to $432.31, and that the cost of drilling and production was $8,439.37, and that even if it should be held that the United States has the title to the land, no money judgment should be rendered (9, 13).

The master, to whom the case was referred, found in favor of the Government, but allowed the defendants the cost of drilling and operation, amounting to $8,439.30 (40, 41, 85). The value of the oil amounted to only $494.08 (41, 79, 85). It appearing, however, that Loucks, the lessor, had received $61.75 as royalty, and that the Gulf Refining Company, to which the lessee had sold the oil, had received $50.42 (79, 85), representing the charge it made the lessee, at the rate of ten cents per barrel, for transporting the oil from the tanks of the lessee located on the property in question to its own tanks some distance away (79), the master recommended that a judgment be rendered against Loucks for $61.75 and against the Gulf Refining

Company for $52.42 (41). (The master probably intended $50.42, which represents the pipage earnings (79, 85).) The United States and the Gulf Refining Company filed exceptions, the former on the ground that the cost of drilling and operation should have been disallowed (42), the latter on the ground that it ought not to be held liable for the pipage earnings (43). All exceptions were overruled (44) and a decree entered in conformity with the master's report (46). The petition of the Gulf Refining Company for a rehearing was denied (49) and all parties appealed (50, 52). The United States assigned error on the ground that the court was wrong in allowing the defendants the cost of drilling and of operation (51), the Gulf Refining Company on the ground that the court was wrong in rendering a judgment against it for $52.42 (53), and the other defendants on the ground that the court was wrong in adjudging the land to belong to the United States (55).

The Court of Appeals found that the property did not belong to the United States (90), and accordingly a decree was rendered remanding the case with directions to dismiss the bill of complaint, and ordering the Government's cross appeals to be dismissed (97).

The amount in controversy being below $1,000, the case comes here on certiorari (99).

THE FACTS.

By a stipulation entered into between the parties at the outset of the trial (58), all of the testimony,

oral and documentary, taken in the *Jeems Bayou Fishing & Hunting Club case* (No. 119 in this court), and in the *Greene case* (No. 192 in this court), became a part of the record in this case. Inasmuch as both of these cases have already been briefed in this court, it will only be necessary, in this statement of the facts, to call attention to the additional testimony that pertains to this case alone.

The land in controversy, lot 1, 14.13 acres, in the northeast fractional quarter of section 27, adjoins lots 2 and 3 in the northwest quarter, which are involved in the *Greene case* (No. 192 in this court). In other words, all of these lots are in the same section (60). The land is similar to the land in that suit, the elevation ranging from the 173.09-foot contour to a 190-foot contour. The lot in question also adjoins two lots in section 23, 17.74 acres (69), which touch the shore of the lake (61). In other words, there is a body of land lying between Warren's meander line, where we claim that title under the patent stops, and the edge of the lake, containing an area of 31.87 acres, 14.13 acres comprising the area of the lot in controversy, and 17.74 acres comprising the area of the two lots immediately to the north in section 23. Warren surveyed no portion of section 23, erroneously assuming that the land in that section was covered by Ferry Lake. Nor did he establish any section lines between sections 27 and 23 (61). As already stated, the lot in controversy adjoins the land in controversy in the *Greene case*, in the north-

west quarter, and also adjoins the two lots just mentioned in section 23. It is a part of one compact body, with a total area of 97.64 acres (61, 64), all of which was omitted from the Warren survey.

Coming now to Warren's so-called meander line across the north part of section 27, we find it begins at the point where the east side of that section intersects the shore. Throughout five of its courses it closely follows the actual margin of the lake. At the end of the fifth course it abruptly leaves the lake, almost at a right angle, and takes three more courses, 6, 7, and 8, before it reaches the north and south section line on the west side of the section. (See Exhibit 13, *Jeems Bayou Fishing & Hunting Club case.*) This meander or traverse line from the eastern boundary of section 27 to angle point 5, is a very correct one, following the border of Ferry Lake with precision for these five courses. But at angle point 5 Warren turns from the border of Ferry Lake at almost a right angle and ascends to ground 17 feet above mean high-water elevation. His traverse line from angle point 5 through section 27 is on high upland, with the turning points far removed from the border of the lake, the elevation in places being as high as 27 feet above the lake (62). From angle point 5 to angle point 8 (point 8 being on the western boundary of section 27) the line does not follow the border of the lake. In other words, it parallels the shore in the first five courses with substantial accuracy, but not in the last four, there being no relation

whatever between Warren's traverse line through the last four courses and the sinuosities of the lake (63). At angle point 5, where, as already stated, he left the lake almost at a right angle, his line runs south 70 degrees west, whereas if he had continued to follow the margin of the lake his line would have run north 8 degrees west, a difference of 62 degrees (64). In other words, he erroneously turned his course at angle point 5 (64). From angle point 5, which is close to the 173.09 foot contour, the ascent is 17 feet in the first course. The next course ascends to an elevation of 27 feet, and the next, which descends to the bottom of a ravine and then ascends, reaches an elevation of 37 feet above the lake level. The next descends into a ravine and immediately ascends on the opposite side to an elevation of 22 feet above the border of the lake, when it descends again on its way to the western boundary of the section (65). The entire area omitted by Warren from his survey of sections 23 and 27 may be compared to an irregular rectangle, approximately 4,000 feet in length and 1,000 feet in width, embracing an area of 97.64 acres (65). As already stated, the first five courses of Warren's traverse line in section 27, counting from the first one at the eastern boundary of the section, is a correct meander line, but the remaining four courses, the last one of which connects with the western boundary of the section, is an incorrect meander line, the error being very apparent and manifest (65). The land is the same on both

sides of that part of the meander line which is erroneous (66). The first five courses are good, but the last four are bad, being absolutely incorrect and the error apparent (73). The length of that portion of Warren's meander line which is bad is 4,290 feet. If he had run it as he should, and as Kidder afterwards ran it, the length would have been 6,800 feet (64).

The patent under which the defendants deraign title, which was introduced in evidence (81), is printed in full in the record (86). It conveys the northeast quarter of the southeast quarter and the northeast fractional quarter of section 27, 123.49 acres all told. The southeast quarter of section 27 is not fractional. According to the official plat of Warren's survey the area of the land in the northeast quarter, which is fractional, contains 83.87 acres, divided into two tracts, one of 57 acres and the other of 26.87 acres. If, therefore, the defendants prevail, the effect will be, under a patent which conveys 83.87 acres in the fractional northeast quarter, to pass title to an additional 31.87 acres lying immediately in front (14.13 acres in section 27 and 17.74 acres in section 23). As the Court of Appeals said, "While these suits involve no part of the land described as section 23, the title to the acreage is necessarily disposed of by the decision of these cases" (92).

There is of course no controversy that the official plat of Warren's survey represents Ferry Lake as bordering on the fractional northeast quarter as well as the fractional northwest quarter of section 27.

Whether Warren ever intended to meander section 27 is a matter of conjecture. The field notes show that in running the *section* line between sections 26 and 27, he went to the *lake*, where a post was set. Similarly, in running the *section* line between sections 27 and 28, he again ran the line to the *lake*, where he set another post. Whether his traverse line between these posts was intended as a meander line is a mere matter of conjecture. The only thing we have to go by is the heading "Front of section 27," followed by nine courses and distances. There is no specific statement that he is following the border of Ferry Lake (66–67).

ASSIGNMENTS OF ERROR.

The assignments of error which we now make in this court are:

1. That the Court of Appeals was without authority to reverse that part of the decree of the District Court adjudging title to be in the United States, none of the defendants having taken any exception to that part of the master's report finding the United States to be the owner of the disputed area.

2. That the Court of Appeals was wrong in adjudging that the patent issued to Jackson on June 1, 1860, embracing the northeast fractional quarter of section 27, T. 20, R. 16, according to the official plat of the survey returned in the General Land Office, operated to pass title to the land lying between Warren's so-called meander line and the edge of

Ferry Lake. The Court of Appeals should have held that title under the patent stopped at this so-called meander line, and that the land in controversy is the property of the United States.

3. That the decree of the District Court was wrong in allowing the defendants the cost of drilling, and that the Court of Appeals should have affirmed that part of the decree of the District Court adjudging title to be in the United States, but should have set aside the money judgment, with directions to enter a new judgment, with cost of drilling disallowed.

ARGUMENT.

The propositions of law involved are identical with those in the *Greene case*, No. 192 in this court, involving adjoining lands. We accordingly refer the court to our brief in that case, a copy of which will be furnished opposing counsel.

There is, however, a point of law present in this case but not in that.

THE COURT OF APPEALS WAS WRONG IN REVIEWING AND SETTING ASIDE THAT PART OF THE DECREE OF THE DISTRICT COURT WHICH AWARDED TO THE UNITED STATES TITLE TO THE DISPUTED AREA, NONE OF THE DEFENDANTS HAVING TAKEN ANY EXCEPTIONS TO THAT PART OF THE MASTER'S REPORT WHICH FOUND THE TITLE TO BE IN THE UNITED STATES. THIS BEING THE CASE, THE COURT OF APPEALS WAS WITHOUT AUTHORITY TO REVIEW THE DECREE.

Topliff v. *Topliff*, 145 U. S. 156, 172.
Riverside, etc., v. *Stebler*, 214 Fed. 703, 705.

The decree of the Circuit Court of Appeals, it is submitted, should be reversed.

JAMES. M. BECK,
Solicitor General.
WILLIAM D. RITER,
Assistant Attorney General.

NOVEMBER, 1922.

○

UPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 191.

THE UNITED STATES OF AMERICA, PETITIONER.

vs.

A. C. LOUCKS ET AL.

WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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United States of America, United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, circuit judges:

A. C. LOUCKS, STAR OIL COMPANY, AND GULF REFINING Company of Louisiana, Appellants and Cross Appellees,
versus
THE UNITED STATES OF AMERICA, APPELLEE AND CROSS Appellant.

Be it remembered, That heretofore, to wit, on the 21st day of April, A. D. 1920, a transcript of the record in the above-styled cause, pursuant to an appeal and cross appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3525, as follows, to wit:

1 United States District Court, Western District of Louisiana, Shreveport Division.

UNITED STATES OF AMERICA, *versus* A. C. LOUCKS, ET ALS. — No. 1165—In equity.

Appeal taken by defendants, and cross appeal taken by plaintiff to the United States Circuit Court of Appeals, Fifth Circuit.

Stipulation as to original exhibits.

Filed in U. S. Circuit Court of Appeals May 25th, 1920.

In the District Court of the United States for the Western District of Louisiana.

United States v. C. W. Lane et al., No. 1153.
United States v. Charles J. Greene et al., No. 1155.
United States v. Jeems Bayou Fishing & Hunting Club et al., No. 1157.
United States v. Gulf Refining Company of Louisiana, No. 1158
United States v. W. H. Enders et al., No. 1160.

United States v. Southwestern Gas & Electric Co. et al., No. 1162.
United States v. J. M. Walling et al., No. 1163.
United States v. Mrs. Jessie M. LaRobadierre et al., No. 1164.
United States v. A. C. Loucks et al., No. 1165.

2 *Stipulation of counsel.*

In the above numbered and entitled suits it is agreed by and between counsel for all parties as follows, to wit:

That, whereas there have been sent up to the United States Circuit Court of Appeals certain maps and exhibits in the original for reproduction in each of the several transcripts, namely:

1. Plat of survey made by A. W. Warren, deputy surveyor, approved August 31, 1839.
2. Field notes of the Warren survey.
3. Resurvey plat of township 20 north, range 16 west, approved by the Commissioner of the General Land Office, July 24, 1916.
4. Supplemental plat of township 20 north, range 16 west, approved March 28, 1917, by the Commissioner of the General Land Office.
5. Supplemental topographic plat of township 20 north, range 16 west, approved March 28, 1917, by the Commissioner of the General Land Office.
6. Illustrative profile, marked "Plaintiff's Exhibit F."

Whereas all of the above suits have been appealed from the United States District Court for the Western District of Louisiana to the United States Circuit Court of Appeals for the Fifth Circuit, and all of said plats and exhibits, with the exception of

3 the illustrative profile above mentioned, were included in the original in the transcript of appeal in the suit entitled United States v. Jeems Bayou Fishing & Hunting Club et al., No. 1157; and

Whereas exhibits numbered one to five, inclusive, are applicable to all of said suits, and Exhibit No. 6 is applicable to suits Nos. 1153, 1158, 1162, 1163, and 1164; and

Whereas the cost of reproducing and incorporating the said exhibits in the several transcripts will be very large: Now, therefore,

It is agreed that in lieu of reproducing and including the said exhibits in the respective transcripts, the clerk of the United States Circuit Court of Appeals for the Fifth Circuit may bind or fasten together, in such manner as he may deem proper, the said plats and exhibits and index the same so that ready reference may be had to them in the cases to which they are applicable.

It is further agreed that the said exhibits shall be deemed and considered as a part of the records on appeal in each of the said suits, as far as applicable thereto, to the same extent as if the exhibits mentioned had been reproduced and incorporated in the several transcripts.

is further agreed that this stipulation shall be printed in each he transcripts of appeal heretofore filed in the United States Cir- Court of Appeals for the Fifth Circuit in suits No. 1157, 1155,), and 1165.

is further agreed that a duplicate of this stipulation shall be filed in the United States District Court for the Western District of Louisiana and shall be copied into the transcript of appeal in suit No. 1153, entitled "United States v. C. W. e et al., the record in which case will, by stipulation, be made of the record on appeal in suits Nos. 1158, 1162, and 1163 and .

hus done and signed in duplicate this 18 day of May, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.

FOSTER, LOONEY & WILKINSON,
CLEM RATCLIFF,
BLANCHARD, GOLDSTEIN & WALKER,
HAMPDEN STORY,
WILKINSON, LEWIS & WILKINSON,
BARNETTE & BLANCHARD,
THIGPEN & HEROLD,
S. M. COOK,
Attorneys for all Defendants.

J. L. PUGH,
Atty. for Standard Oil Co. of La.

Bill of complaint.

he District Court of the United States for the Western District of Louisiana, Shreveport Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
. LOUCKS, STAR OIL COMPANY, GULF RE- ing Company of Louisiana, defendants.
No. 1165—In equity.

he Honorable Judge of the District Court of the United States r the Western District of Louisiana, sitting within and for the reveport Division:

he United States of America, by its solicitor, Robert A. Hunter, ial assistant to the Attorney General, acting herein under the di- on and by the authority of the Attorney General of the United es, brings this bill of complaint against A. C. Loucks, a citizen e State of Kansas, and a resident of the city of Coffeyville, said e; K. W. Brown, Robert L. Stringfellow, and C. W. Brown, ens of the State of Louisiana, and residents of the city of Shreve- , in the Western District of said State, operating under the name e Star Oil Company; and the Gulf Refining Company of Lou-

isiana, a corporation organized under the laws of the State of Lou-
isiana, and domiciled and doing business in the city of New Orleans
in the Eastern District of said State, and thereupon complains and
shows unto your honor:

I.

That on and before December 15, 1908, the plaintiff was the owner
as a part of its public domain, of a certain tract of land, which was
then unsurveyed public land of the United States, but
6 which has since been surveyed under the direction and with
the approval of the Secretary of the Interior, and is now
known and described as lot number one (1) of section twenty-seven
(27), in township twenty (20), north of range sixteen (16) west
Louisiana meridian, Louisiana, situated in the parish of Caddo
Western District of Louisiana, as shown by a plat of survey ap-
proved March 28, 1917, by Clay Tallman, Commissioner of the Gen-
eral Land Office and ex-officio surveyor general for the State of Lou-
isiana.

That on and prior to the aforesaid date plaintiff was, and still is
the owner and entitled to the possession of the above-described land
and likewise of all oil, petroleum, gas, and other minerals therein
contained.

II.

On December 15, 1908, in order to conserve the public interests, and
in aid of such legislation as might thereafter be proposed, recom-
mended, and enacted, the President of the United States, by and
through the Secretary of the Interior, and under the legal authority
vested in him so to do, duly and regularly withdrew from settlement
and entry and from all other forms of appropriation all of the public
lands in townships 15 to 23 north, and ranges 10 to 16 west, Louisiana
meridian, which withdrawal included the lands herein involved.

On the 2nd day of July, 1910, the President of the United States
acting by and through the Secretary of the Interior, by Executive
order, and under special authority conferred by the act of June 25,
1910, entitled "An act to authorize the President of the United States
to make withdrawals of public lands in certain cases," ratified and
confirmed and continued in full force and effect the previous
7 order of withdrawal of December 15, 1908, above set forth, in
so far as it affected the land described herein, including the
same as a part of petroleum reserve number four. That such lands
so withdrawn by said order of July 2, 1910, including the land herein
involved, were withdrawn from settlement, location, sale, or entry
and reserved for classification and in aid of legislation affecting the
use and disposal of petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been vacated but
both are now in full force and effect, and said lands above named
including the property involved herein, ever since the date of the first
withdrawal, December 15, 1908, have not been subject to exploration
for oil, petroleum, gas, or other minerals, or to location or entry or

any kind under the general land laws, or mineral laws, of the United States.

III.

Plaintiff avers that notwithstanding said orders of withdrawal, and in violation of the rights of the plaintiff, and contrary to its laws, and without any valid title, lawful right or authority, the defendants herein, in bad faith, entered upon and took possession of the tract particularly described in paragraph I hereof, for the purpose of drilling thereon for oil and gas, and did so drill one well known as Loucks No. 2, and did withdraw therefrom large quantities of oil and gas, the exact amount and value of which is unknown, all to the great and irreparable injury of plaintiff.

IV.

That on and prior to the dates of the withdrawal orders
8 hereinabove set forth, to wit, December 15, 1908, and July 2, 1910, none of the said defendants, or any one from whom the defendants, or any of them, claim, was in the possession of said land, or a bona fide occupant thereof in diligent prosecution of work thereon leading to a discovery of oil or gas, and no such discovery was in fact made prior to said orders of withdrawal, nor until long after said orders were issued, and had become effective to withdraw said land from location, entry, and other appropriation.

V.

Plaintiff avers that no mineral location was in fact made by any of the defendants herein on the land upon which the said well is located, but, plaintiff is informed and believes, that the oil and gas withdrawn from said tract of land, as above set forth, were extracted therefrom under the color of a pretended claim of ownership in and to the said lands by the defendants herein. Plaintiff avers that said A. C. Loucks, Star Oil Company, and the Gulf Refining Company of Louisiana, defendants, have no right, title, or interest in and to the said tract of land, but acting under the said pretended claim of ownership, and subsequent to the withdrawal orders hereinabove referred to, entered upon the said tract of land, and the said Star Oil Company drilled a well thereon, as aforesaid, and has taken therefrom a large quantity of oil and gas, which it, the said Star Oil Company, has marketed and sold to the said Gulf Refining Company of Louisiana, defendant herein; that the said Star Oil Company received the price of the oil and gas so produced, marketed, and sold by it, and paid a royalty therefrom to the said A. C. Loucks, defendant, the amount of which is to the plaintiff unknown.

9 The exact quantity of oil and gas so produced, withdrawn from the land, marketed and sold, the value thereof, and the price and royalty paid to and received by the defendants herein, being unknown to the plaintiff, full discovery from the said defendants is sought.

VI.

Except as in this bill stated, the plaintiff has no other knowledge or information concerning the nature of any other claims asserted by the defendants herein, or any of them, and, therefore, leaves said defendants to set forth their respective claims and interests.

In that behalf the plaintiff alleges that none of the defendants herein has, or has had, any right, title, or interest in or to, or lien upon, the said land, or any part thereof, or any right, title, or interest in or to the petroleum, minerals, oil, or gas deposited therein, but, on the contrary, the acts of these defendants who have entered upon said land, drilled a well thereon, and converted the oil and gas deposited therein to their own use, as aforesaid, were all in violation of the laws of the United States and of the rights of plaintiff.

VII.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and unless restrained by order of this court will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

VIII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of three hundred ($300.00) dollars, and that all of the defendants herein acted in bad faith in the premises.

IX.

In consideration whereof and forasmuch as the plaintiff is without full, adequate, and complete remedy in the premises save in a court of equity, plaintiff prays—

1. That the said defendants be each required to make full, true, and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale, or other form of appropriation under the pubilc land or mineral laws of the United States.

3. That any and all deeds or instruments of writing of any kind or nature whatever under which defendants, or any of them, may claim the said land be decreed to be clouds upon plaintiff's title, and that same may be declared null and void, in so far as they may include, directly or indirectly, the property in controversy in this cause, and, to that extent that said deeds and other instruments of writing be canceled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and ear of all claims of the said defendants or any of them, and that e possession of said land may be restored to the plaintiff.

5. That a receiver may be appointed by this court to take possesion of said land and of all wells, improvements, and drilling parahernalia thereon, and any other property and instrumentalities on id land, used for the purpose of boring and extracting, storing nd transporting oil or gas, with full power and authority to conue operations on said land in the production and sale of oil, gas, nd other minerals, and to do and perform such acts as may be ecessary to protect the property of plaintiff against injury and aste and for the preservation thereof.

7. That an accounting may be had by each of said defendants herein each of them shall make a full, complete, itemized, and orrect disclosure of the quantity of oil and gas removed or exacted from said land, and of any and all moneys, or things of alue, derived from the sale and disposition of same, and all rents, oyalties, and proceeds arising from the sale or lease of same, and hat the plaintiff may recover from the said defendants, respectively, ll such sums so received by them, and all damages sustained by laintiff in the premises.

8. That plaintiff may have such other and further relief as may eem just to this honorable court and agreeable to equity and good onscience.

May it please the court that writs of subpœna issue directed to the Star Oil Company, K. W. Brown, Robert L. Stringfel-2 low, and C. W. Brown, defendants, commanding them and each of them at a certain time and under a certain penalty herein to be named, to appear before this honorable court and hen and there full, true, and direct answers make to all and singuar the premises, and to stand to perform and abide by such order, irection, and decree as may be made against it in the premises, and s shall be meet and agreeable to equity.

And may it further please the court that an order be granted and ntered, directed to the following defendants, not inhabitants of, r now within, this district, to wit, A. C. Loucks and the Gulf Refinng Company of Louisiana, and served as provided by law, directing aid defendants to appear and answer in this cause on a day certain o be designated by this court.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Affidavit.

UNITED STATES OF AMERICA,
Northern District of California.

D. R. THOMPSON, being first duly sworn, deposes and says:

That he is a mineral inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging

to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location, and all forms of appropriation by order of December 15, 1908, and July 2, 1910; and that from the ex-
13 amination of such lands, and from examination of the records of the General Land Office and of the local Land Office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing bill of complaint, and that the facts and allegations therein contained are true.

Sworn to and subscribed before me this 28th day of July, 1917.
Deputy Northern.

C. W. CALHEATT,
Clerk United States District Court, ——— *District of California.*

Order.

The above and foregoing bill of complaint and affidavit being considered, and it appearing to the court that A. C. Loucks and the Gulf Refining Company of Louisiana are not inhabitants of the Western District of Louisiana, and are domiciled outside of said district,

It is, therefore, ordered that the said absent defendants be, and they are hereby, directed to appear and answer to the above and foregoing bill of complaint at Shreveport, in the Western District of Louisiana, on the 15 day of Sept., 1917, at the hour of ten o'clock a. m., and that the service of duly certified copies of the said bill of complaint and of this order be made on said defendants wherever found.

Thus done and signed this 2 day of Aug., 1917.

GEO. WHITFIELD JACK,
United States Judge.

Indorsed: Bill of complaint. Filed Aug. 2, 1917.

14 (*Motion to dismiss by Gulf Refining Co.*)

In the District Court of the United States for the Western District of Louisiana—Shreveport Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* A. C. LOUCKS, STAR OIL COMPANY, GULF Refining Company, of Louisiana, Defendants.	No. 1165—In equity.

Now comes the Gulf Refining Company of Louisiana, one of the defendants in the above cause, and moves the court to dismiss the bill filed in this case because said bill does not state any matter of equity entitling plaintiff to the relief prayed for, nor are the facts as stated sufficient to entitle plaintiff to any relief against this defendant.

Wherefore, defendant prays that this motion be sustained, the bill be dismissed as against this defendant, and that it be dismissed herefrom with costs.

THIGPEN & HEROLD,
Solicitor for Defendant, Gulf Refining Company of Louisiana.

Indorsed: Motion to dismiss on part of Gulf Refining Company of Louisiana. Filed Aug. 18, 1917.
B.

15 *Minutes showing overruling of motion to dismiss.*

Equity Journal, Vol. 1.

United States District Court, Western District of Louisiana.

THURSDAY, SHREVEPORT, LA, *February 28, 1918.*

Court met pursuant to adjournment and was ordered opened.

Present and presiding: Hon. Rufus E. Foster, U. S. judge.

UNITED STATES OF AMERICA,
vs.
A. C. LOUCKS ET AL. } No. 1165—In equity.

This cause came on to be heard this day according to previous assignment, upon the motion to dismiss heretofore filed herein by defendants, Mr. Robert A. Hunter, special assistant to the Attorney General, appearing as solicitor for complainant, and Mr. S. L. Herold, appearing as solicitor for defendants. The said motion to dismiss was argued, submitted and overruled by the court.

16 *Answer Star Oil Co. and K. W. and C. W. Brown to bill complaint.*

In the District Court of the United States for the Western District of Louisiana—Shreveport Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
A. C. LOUCKS, STAR OIL COMPANY, GULF Refining Company of Louisiana, defendants. } No. 1165— In equity.

The joint answer of of the Star Oil Company and of K. W. Brown and C. W. Brown, citizens of the State of Louisiana, to the bill of of complaint herein filed by the United States.

In this matter now comes the Star Oil Company and K. W. Brown and C. W. Brown, citizens of the State of Louisiana, and for answer to the bill of complaint herein say:

1. They deny this allegation, and on the contrary aver that there is no legal survey describing said land as lot number one of section twenty-seven, township twenty, range sixteen, but on the contrary charge that said property so claimed by the said complainant is properly described on the plat of the United States survey made by the United States as the northeast fractional quarter of section twenty-seven, township twenty, range sixteen, and as such was patented by the United States to Matthew G. Jackson, on the 1st day of June, 1860, and that your defendants held by mesne conveyance under and through said Jackson the said described
17 property as will appear from the patent issued by the United States to said property, which will be produced on the trial hereof.

Your defendants therefore deny that the complainant is the owner or entitled to the possession of the land described or that it has any interest in the oil or minerals obtained therefrom.

2. Your defendants aver that the matters and things here alleged the utterly immaterial to any issue in this case and should be stricken from said bill of complaint for said reason. But if this motion to strike same from said bill of complaint is overruled and your defendants are required to answer the same, then they admit that the President of the United States issued the orders named, but they deny that the property herein involved was affected in any manner by such order of the President, for the reason that it at that time did not belong to the United States and it had no control over the same and could not affect it in any way.

3. Your defendants show that the matters and things here alleged are utterly immaterial to any issue in this case; but if required to answer same they show that they did have a valid title to said property and have lawful right to enter upon and take possession of the same and did have a right to drill thereon for oil or gas, and exercising such right they did drill one well thereon, known as
"Louck's No. 2," but did not withdraw therefrom a large quan-
18 tity of oil and gas, as will hereinafter be set forth. And they show that the said A. C. Loucks has no interest in said land from the oil produced therefrom, all of his right, title, and interest having been purchased by your defendants, K. W. and C. W. Brown, as will appear by a deed from him covering said property, which will be produced on the trial hereof.

4. The matters and things here alleged are utterly immaterial to any issue in this case. But if forced to answer same they admit that they did not claim it under the mining laws of the United States, but aver that they claimed said property under the purchase thereof from the said A. C. Loucks, who held it from the original patentee from the United States, as heretofore alleged.

5. Your defendants show that the matters and things herein alged are utterly immaterial and irrelevant to any issue in this case. ut if they are forced to answer the same they show that they have ade no mineral location on said property but drilled on the same as e owners thereof as heretofore set forth. And they aver that they ted in good faith in going on said property under said claim of wnership, but they deny that they took therefrom a large quantity f oil or gas and aver that they only received in oil from said tract f land four hundred and forty-one and 14/100 barrels, for which ey received four hundred and thirty-two dollars and 31/100 $432.31) dollars, and that the cost of drilling said well and proucting the said oil amounted to the sum of eight thousand four hundred and thirty-nine and 37/100 ($8,439.37) dollars, as will fully appear on the trial hereof; and even if it should be decreed they are not the owners of said land, they then ow that the United States was without right or title to said oil ntil it was produced and brought to the surface, and that the said nited States must pay the cost of producing the same before it as any right or claim thereto. In any event, if it be held that e said United States is the owner of said land and entitled to e oil produced therefrom, then and in such event they have a right offset the claim of the said United States for said oil by the said st of producing it, and inasmuch as the cost of producing said oil r exceeds the value of the oil produced, that the United States is titled to nothing in any event by this demand.

6. They deny the allegation herein made and on the contrary aver at they are the owners of said property and have the right to the inerals produced therefrom and they deny that they were in viotion of any of the laws of the United States or in violation of any f the rights of the said plaintiff.

7. They deny this allegation, and on the contrary aver that they ve long since disposed of all of their right, title, and interest in nd to said property, and the same is now owned and claimed by the addo Oil Refining Company, Incorporated, of Louisiana, and havg sold said property they have no intention of drilling thereon.

8. They admit that the value of the oil and land in controversy exceeds the sum of three hundred dollars but deny that they have acted in bad faith in the premises, and on the conrary aver that they believed that they were owners of the property nd had a right to drill thereon, and they still aver that they were e owners of the said property at said time and that the plaintiff ad absolutely no interest therein.

9. They deny the allegation here made and aver that the plaintiff as a full and adequate remedy at law.

Wherefore, they pray that the plaintiff's demands be rejected at its st and for general relief.

ALEXANDER & WILKINSON,
Attorneys for Defendants.

Indorsed: Answer Star Oil Co. and K. W. and C. W. Brown. Filed Aug. 23, 1917.

Plaintiff's reply to set-off and counterclaim, Star Oil Co. et al.

In the District Court of the United States for the Western District of Louisiana—Shreveport Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
A. C. LOUCKS, STAR OIL COMPANY, GULF REFINING COMPANY OF LOUISIANA, defendants.
No. 1165—In equity.

1. Now into this honorable court comes the United States of
21 America, plaintiff in the above numbered and entitled cause, appearing herein and represented by its solicitor, Robert A. Hunter, special assistant to the Attorney General, and for reply to the set-off and counterclaim asserted by defendants, Star Oil Company, K. W. Brown and C. W. Brown in their answer filed in the above numbered and entitled cause, shows:

2. That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.

3. Plaintiff denies all the allegations of the said answer relating to said set-off and counterclaim, and particularly paragraph 5 of said answer wherein said counterclaim as set-off are asserted by defendants.

4. Plaintiff shows that the said defendants are not entitled to any set-off or counterclaim whatsoever in the premises.

5. Further replying, plaintiff avers that the said defendants entered upon the land described in the bill of complaint, and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendants were wilful and knowing trespassers upon said land.

6. Plaintiff further shows, in the alternative, that even if
22 the said defendants are entitled to a set-off, or counterclaim, in any amount, which is denied, the sum claimed by the defendants is excessive and should not be allowed.

7. Wherefore, plaintiff prays that the set-off and counterclaim asserted by the defendants be denied and disallowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed: Plaintiff's reply to defendant's (Star Oil Company, K. W. Brown and C. W. Brown) set-off and counterclaim. Filed Aug. 28, 1917.

Answer of A. C. Loucks to bill of complaint.

District Court of U. S., Western District of Louisiana.

UNITED STATES OF AMERICA,
vs.
A. C. LOUCKS ET AL. } No. 1165—In equity.

In this case now comes A. C. Loucks, made defendant herein, and for answer to the demands and bill of complaint of the United States adopts as his answer all of the allegations made in the answer of his codefendants, K. W. Brown and C. W. Brown, and makes the answer of his said codefendants his own.

3 Wherefore, he prays that he demands of the plaintiff be rejected at its cost, and for general relief.

ALEXANDER & WILKINSON,
Attorneys for Defendants.

Indorsed: Answer of A. C. Loucks. Filed Sep. 19, 1917.

Interrogatories propounded by plaintiff to Star Oil Co. and Gulf Refining Company of Louisiana.

(1) State who drilled the well known as Loucks No. 2 on the land in controversy.

(2) State when the said well was commenced, when it was completed, and how long and by whom same was operated.

(3) Did said well produce oil, and was said oil or the proceeds of the sale thereof converted to the use and benefit of the defendant in this cause?

(4) During what period was said well operated in the production of oil, and when, if at all, did it cease to produce oil?

4 (5) State the total production of oil from the said well (a) up to July 31, 1917, and (b) from July 31, 1917, to January 1, 1918.

(6) State whether or not the said well was operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

(7) Was a separate and complete record kept by the Star Oil Company and the Gulf Refining Company of Louisiana of the oil produced by said well? If so, state how, and in what manner said record was kept.

(8) If the production as given by you in your answer to the bill of complaint and in your answers to the preceding interrogatories is based upon an estimate of the quantity of oil produced by well in suit, in connection with other wells not in suit, or if you have stated that said production is estimative and not exact, then state (a) the total production of all wells operated in conjunction with the wells in suit, naming and giving the location of such other

wells, and (b) the manner in which you arrived at, or figured the production of the well in suit.

(9) State the total market value of the oil produced by the
25 Star Oil Company and sold to the Gulf Refining Company of Louisiana from the land in controversy, and say whether or not the value as given by you in your answer is exact or approximate, and, furthermore, state upon what the value as given is based.

(10) State whether or not the Gulf Refining Company of Louisiana is engaged, and was engaged at the time said oil was taken from the land in suit, in the manufacture and sale, as well as the production of oil, and also state whether the oil taken by it from the land in controversy was sold to other persons, or corporations, or was manufactured by it into products of oil.

(11) State to what person or company the production of the well in suit was sold during the time that same was operated.

(12) State the quantity and value of the oil extracted from the land in controversy which was sold by the producers thereof to the purchaser or purchasers thereof.

(13) What was the total price received by the Star Oil Company for all the oil produced by the well in controversy?

(14) What was the quantity and value of the oil taken away and removed from the property in controversy by the Gulf Refining Company of Louisiana?

26 (15) Is it not a fact that an agent, representative, or employee of the Gulf Refining Company of Louisiana went upon the land in controversy at the time of any pipe-line run, or runs, for the purpose of gauging the quantity of oil transferred from the tank, and did not said gauger measure, or ascertain, the amount of oil run from said tank, or tanks, to said pipe line? If the amount of oil purchased by the Gulf Refining Company of Louisiana from the Star Oil Company out of the production of the land in controversy was not ascertained by a gauger, in the manner above indicated, then state how the quantity of oil so purchased was measured or ascertained.

(16) What are the principal products manufactured from petroleum, or crude oil?

(17) State the total value, either exactly if you know, or approximately, if you do not know exactly, of the products manufactured by the Gulf Refining Company of Louisiana from the oil extracted from the land in controversy.

(18) State the total profits made by you (a) from the sale of any or all of the crude oil extracted from the land in controversy, and (b) the profits made by you from the manufacture and sale of the products of said crude oil.

(19) If in the answer to the foregoing interrogatories it is
27 stated the Gulf Refining Company of Louisiana did not manufacture any or all of the oil taken from the land in controversy, but that it sold the same, then state (a) to whom said oil or any part thereof was sold, (b) what profit the Gulf Refining Com-

pany of Louisiana made on the sale thereof, (c) how delivery was made to the purchaser, (d) what relation, if any, existed between the Gulf Refining Company of Louisiana and the purchaser of said oil, with particular reference to whether the purchasing company and the Gulf Refining Company of Louisiana are, or not, composed of the same stockholders, or managed by the same directors or officers, and (e) to what extent, if any, the Gulf Refining Company of Louisiana, or its stockholders participated in the profits made by the purchasing company out of said oil.

(20) How much money was paid by you as royalty to the other defendants herein out of the proceeds of the sale of oil taken from the land in controversy? State the names of the persons to whom such royalty was paid and the amount paid to each.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Note.—All of the above interrogatories except those numbered 16, 17, 18, and 19 are to be answered by the Star Oil Company and K. W. Brown and C. W. Brown.

Interrogatories numbered 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19 and 20 are to be answered by the Gulf Refining Company of Louisiana.

Indorsed: Application and order to file interrogatories and interrogatories addressed to Star Oil Company, K. W. Brown, C. W. Brown, and The Gulf Refining Company of Louisiana. Filed Feb. 20, 1918.

28 *Answer Star Oil Co. to interrogatories.*

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
A. C. LOUCKS, ET AL., DEFENDANT. } No. 1165—In equity.

In this matter now comes the Star Oil Company, and for answer to the interrogatories to it propounded in the above matter, says:

To inty. No. 1 it answers: The Star Oil Company.

To inty. No. 2 it answers: The said well was commenced on Nov. 14th, 1912, and completed on January 31st, 1913. Operated by the Star Oil Company for about three months.

To inty. No. 3 it answers: Said well produced oil, and the proceeds from sale of same were converted to the use and benefit of the defendants in this case.

To inty. No. 4 it answers: The well was operated in the months of February, March and April, 1913, and ceased to produce oil the latter part of April, for the reason that it was abandoned at that time on account of being operated at a loss.

29 To inty. No. 5 it answers: The total production of said well to July 31, 1917, amounted to 504.16 barrels, and no oil was produced from that date.

To inty. No. 6 it answers: Said well was operated as an entity.

To inty. No. 7 it answers: A separate and complete record was kept of oil produced by this well. Record was kept in a special book for oil production, and every time a tank or portion of a tank of oil was run a separate entry was made.

To inty. No. 8 it answers: Production as given is exactly the amount produced and was figured from tank gauge tables made for that purpose, and said well was never operated in connection with any other wells.

To inty. No. 9 it answers: The total market value of oil sold the Gulf Refining Company of Louisiana was four hundred ninety-four and 07/100 dollars, and this is the exact amount (the Star Oil Company received four hundred thirty-two and 31/100 dollars, and A. C. Loucks received sixty-one and 76/100 dollars). The value given is based upon the market price of oil on the day said oil was sold.

To inty. No. 10 it answers: The Gulf Refining Company of La. is said to be in the business of manufacture and sale of oil; also
30 in the production of oil. Do not know what disposition the Gulf Refining Company made of the oil sold to them from said well.

To inty. No. 11 it answers: All oil produced by this well was sold to the Gulf Refining Company of Louisiana.

To inty. No. 12 it answers: Said well produced 504.16 barrels of oil, valued at four hundred ninety-four and 07/100 dollars.

To inty. No. 13 it answers: The total price received by the Star Oil Company from the well in controversy was four hundred thirty-two and 31/100 dollars.

To inty. No. 14 it answers: The quantity of oil taken away and removed from the property in controversy by the Gulf Refining Company of Louisiana was 504.16 barrels, and the value was four hundred ninety-four and 07/100 dollars.

To inty. No. 15 it answers: It is a fact that an employee or representative of the Gulf Refining Company of Louisiana went upon the land in controversy at any time, and pipe-line run or runs were made for the purpose of gauging the quantity of oil transferred from tanks, and said gauger did measure and ascertain the amount of oil run from said tank or tanks to said pipe line. The amount of
31 oil purchased by the Gulf Refining Company of La. out of the production of the land in controversy was ascertained by a gauger, in the manner above indicated. The quantity of oil so purchased was ascertained by measurement of amount of oil in tank or tanks in feet and inches, and from the number of feet and inches of oil run from the tank or tanks; the number of barrels was calculated from gauge tables made for each tank for that purpose.

To inty. No. 20 it answers: The royalty was not paid by the Star Oil Company, but was paid by the Gulf Refining Company of Louisiana (which is the manner in which royalties are usually paid) to A. C. Loucks, and the amount was sixty-one and 76/100 dollars.

K. W. BROWN.

Sworn to and subscribed before me on this the 2nd day of March, 1918.

JNO. D. WILKINSON,
Notary Public.

[SEAL.]

Indorsed: Answer to interrogatories. Filed March 4, 1918.

Answer Gulf Refining Co. to interrogatories.

In the District Court of the United States for the Western District of Louisiana.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
A. C. LOUCKS ET AL., DEFENDANTS. } No. 1165—In equity.

In the above numbered and entitled cause now comes the Gulf Refining Company of Louisiana, through C. R. Minor, its third vice president, a proper officer of the said corporation for the answering of interrogatories to it herein, and answers said interrogatories, under oath, as follows, to wit:

To interrogatory No. 5 defendant answers: This defendant has no record or information as to the production from the said well.

To interrogatory No. 6 defendant answers: This defendant has no record or information as to the operation of the said well, except that during the time it purchased oil from the said well the said well was operated by itself.

To interrogatory No. 7 defendant answers: Yes; the records were kept by the Gulf Refining Company of Louisiana of the pipe-line runs from the said well into the pipe line of the Gulf Refining Company of Louisiana.

To interrogatory No. 8 defendant answers: This defendant has no record or information as to the production from the said well.

To interrogatory No. 9 defendant answers: The total number of barrels of oil sold to the Gulf Refining Company of Louisiana from said well was 504.17 barrels, of the value of $494.08. The value given is exact and is based on posted pipe-line prices at the date of the purchase of the oil, same being the prevailing market price of oil in the field at such date.

To interrogatory No. 10 defendant answers: The Gulf Pipe Company of Louisiana is not now nor was it at the time of the purchase of the said oil engaged in the manufacture of any products of oil.

To interrogatory No. 11 defendant answers: The oil purchased t this defendant from the production from the said well was sold t this defendant to the Gulf Pipe Line Company, a Texas corporatio

To interrogatory No. 12 defendant answers: Not having inform tion with respect to the same, this defendant can not answer this i terrogatory except to report that it purchased 504.17 barrels of sai oil for $494.08, the then market price thereof.

To interrogatory No. 14 defendant answers: The amount of o taken away and removed from the property in controversy by th Gulf Refining Company of Louisiana was 504.17 barrels, of the valu of $494.08.

34 To interrogatory No. 15 defendant answers: Yes.

To interrogatory No. 16 defendant answers: Gasoline, kero sene, and lubricating oils.

To interrogatory No. 17 defendant answers: The Gulf Refining Company of Louisiana never manufactured any products from an oil extracted from the land in controversy.

To interrogatory No. 18 defendant answers: (a) The Gulf Re fining Company of Louisiana made no profits from the sale of an of the crude oil extracted from the land in controversy; it purchased 504.17 barrels of said oil for its value, $494.08, and sold the same to the Gulf Pipe Line Company at the same price, plus a reasonable pipage charge of 10 cents per barrel, or $50.42, which represented the cost of transporting said oil plus reasonable depreciation and obsolescence charges on the pipe line through which it conveyed the oil for delivery to the Gulf Pipe Line Company.

(b) The Gulf Refining Company of Louisiana not having manu factured any products from said crude oil, never made any profits thereby.

To interrogatory No. 19 defendant answers: The oil purchased by the Gulf Refining Company of Louisiana out of the oil produced from said land was sold—

35 (a) To the Gulf Pipe Line Company.

(b) At no profit unless the Gulf Refining Company of Louisiana made some profit out of the said pipage charge of ten cents per barrel.

(c) By delivery into the lines of the Gulf Pipe Line Company at its receiving station in the State of Texas.

(d) The Gulf Pipe Line Company and the Gulf Refining Com pany of Louisiana are not managed by the same directors and of ficers, nor are they composed of identically the same stockholders; but the Gulf Oil Corporation, a corporation under the laws of the State of New Jersey, is the principal stockholder in both corpora tions.

(e) If the Gulf Pipe Line Company made any profits out of said oil, as to which this defendant has no knowledge, the Gulf Refining Company of Louisiana, not being a stockholder in the Gulf Pipe Line Company, participated in none of such profits.

If the Gulf Pipe Line Company made a profit out of said oil, as to which this defendant has no knowledge, such stockholders of this defendant as were stockholders in the Gulf Pipe Line Company were benefited thereby.

To interrogatory No. 20 defendant answers: The Gulf Refining Company of Louisiana paid nothing as royalty out of said oil; it purchased the said oil from K. W. Brown and A. C. Loucks, in the proportions of $\frac{7}{8}$ from the said Brown and $\frac{1}{8}$ from the said Loucks, and settled for same in the same proportions.

C. R. MINOR.

36 Sworn to and subscribed before me, on this the 15th day of March, 1918.

[SEAL.] J. A. THIGPEN,
Notary Public in and for Caddo Parish, Louisiana.

Indorsed: Answer of the Gulf Refining Company of Louisiana to interrogatories. Filed Apr. 20, 1918.

Motion to take bill pro confesso as to defendant, R. L. Stringfellow.

Now into this honorable court comes Robert A. Hunter, special assistant to the Attorney General, and with respect represents:

That service of subpœna in chancery was made on defendant R. L. Stringfellow, August 13, 1917. Plaintiff shows that the said defendant has filed no answer or other appearance herein.

Plaintiff, therefore, moves that the bill of complaint in this cause be taken pro confesso against the said defendant.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Filed Feb. 25, 1918.

37 *Order of pro confesso.*

As entered on equity journal of said court.

Upon motion of Robert A. Hunter, Esq., special assistant to the Attorney General,

It is ordered that this cause be set for Thursday, February 28, 1918, for hearing on the motion to dismiss heretofore filed herein by the Gulf Refining Company of Louisiana.

In this cause also comes Mr. Robert A. Hunter, special assistant to the Attorney General and solicitor for complainant, and files a motion to take the bill of complainant herein as confessed as to R. L. Stringfellow, one of the defendants herein; and it appearing from the record that subpœna in chancery was duly served upon said defendant, R. L. Stringfellow, on August 13, 1917, and that no appearance, plea, or answer has been filed by said defendant;

It is ordered that a decree pro confesso be and the same is hereby entered as against said defendant, R. L. Stringfellow.

Order appointing special master.

United States District Court, Western District of Louisiana.

UNITED STATES
vs.
A. C. LOUCKS ET AL. } No. 1165.

This case now being at issue, the court considering that the services of a master are necessary to aid the court and economize its
38 time, and for the purpose of expediting the final hearing of said cause, the court of its own motion appoints Edward H. Randolph, Esq., special master herein.

It is further ordered that this case be referred to said master to take the evidence and report his findings of fact and conclusions of law thereon.

The said special master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the court or elsewhere as may be advisable.

RUFUS E. FOSTER, *Judge.*

March 29, 1918.
Filed Mar. 29, 1918.

Report of special master.

In United States District Court, Western District of Louisiana.

Nos. 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1162, 1163, 1164, 1165, 1167, 1168, 1170, 1171, 1172.

To the Honorable RUFUS E. FOSTER,
Judge, U. S. District Court, Western District of Louisiana:

May it please your honor:

Having been appointed by your honor master in chancery in the above cases to take the evidence and report findings and conclusions of law thereon, and after having heard the testimony and arguments of counsel, I beg to make this my report. In consider-
39 ing the two cases I have found they naturally group themselves into two classes, which I have designated as class "A" and class "B."

Class A includes the following cases:

United States vs. C. W. Lane et al., No. 1153.

United States vs. Chas. J. Green, Jr., et al., No. 1155.

United States vs. Jeems Bayou Hunting & Fishing Club et al., No. 1157.

United States vs. Gulf Refining Company of Louisiana, No. 1158.

United States vs. W. H. Enders et al., No. 1160.

United States vs. Southwestern Gas & Electric Company et al., No. 1162.

United States vs. J. M. Walling et al., No. 1163.
United States vs. Mrs. Jessie M. La Robadierre et al., No. 1164.
United States vs. A. C. Loucks et al., No. 1165.
Class B includes the following cases:
United States vs. W. W. Green et al., No. 1154.
United States vs. Henry Hunsicker et al., No. 1156.
United States vs. Arkansas Natural Gas Co. et al., No. 1159.
United States vs. R. B. Norvell et al., No. 1167.
United States vs. W. H. Mathews et al., No. 1168.
United States vs. Dillard P. Eubank et al., No. 1170.
United States vs. Mrs. Lydia H. McMullen et al., No. 1171.
United States vs. Sam Mason et al., No. 1172.

In class A the defendants deny the title of the United States. In class B they admit the title to the lands in dispute are still in the United States, but set up that they in due course according to law made mineral locations thereon of which they can't be divested.

First in consideration I take up class A suits of which the case of ited States vs. Jeems Bayou Hunting & Fishing Club et al., No. 57, is most typical of the contentions raised by the United States d the defendant in class A suits. Concisely stated in the class A ts the contention of the United States is that the ownership of lands in dispute has never at any time passed from it; that in int of fact they were in the category of unsurveyed public lands til December, 1916, and that since that survey no alienation has n made by the Government and that defendants are without any niment of title.

On the contrary, the defendants deny that the lands were in the gory of unsurveyed lands prior to March 1917 and aver that or to that date, to wit, 1839, their lands were surveyed by A. M. rren, deputy United States surveyor, mapped and filed in the deral land office, the land sold and United States patent issued refor, and that the defendants have good title derived by mesne veyances from the the original patentees. In the survey of 1839 township 20, the Government claims that the surveyor left out the survey 987.77 acres, 248.87 acres of which is involved herein d to which the Government claims defendant has no title. The ve are the outstanding contentions. There lands are all border ds lying on Ferry Lake and are all in township 20, range 16 west, uisiana meridian, and lie in the following sections of said town-p, to-wit: Three, four, five, eight, nine, ten, twelve, thriteen, een, sixteen, twenty-three, twenty-four, twenty-five, twenty-seven, and thirty-two.

In addition to the above general statements of the issues made by defendant there are in the pleadings such issues as ial of the right to make a resurvey of township 20 on the ground t the order therefor directs the survey from range 10 to range 11, ch is not inclusive of range 16; also that lands in controversy e in character swamps and passed to the State; and that the

alleged unsurveyed lands in this township lying on the lake were formed by relictions and passed to the defendant holders as riparian proprietors.

Altho such contentions were set up by defendants pleadings, they were as the trial progressed, in a number of the cases, practically abandoned and the controversy settled down on the pivot of whether the lands in controversy, at the time in 1839 when a survey of this township was made by the Government, were in point of fact included; or if not in point of fact included in the 1839 survey, yet the Government should be held, as respects defendants and their authors in title, in law as virtually having thru its owns surveyor and his maps held out that all lands in question at that date were included, and therefore should not be permitted at this date to revise its representation thru its surveyor and maps to the prejudice of defendant, even tho the lands in controversy were in place and not included in map. This would reduce the controversy to a question of law. To make this clear I will take up the cases seriatim, and first the case No. 1157 of United States vs. Jeems Bayou Hunting & Fishing Club et al. as being the most illustrative of the contentions.

42 UNITED STATES
vs.
JEEMS BAYOU HUNTING AND FISHING CLUB ET AL. } No. 1157.

This case involves lots 8, 9, and 10, aggregating 85.22 acres of section 10, twp. 20 N., R. 16 west, and is shown on plat No. 11 of plaintiff's offering, colored red. This plat is called a supplemental plat of twp. 20 N., range 16 west, made by A. D. Kidder and associates, United States surveyor in 1916, and approved Marcy [March] 28, 1917. This same plat illustrates the Government contention that the original survey of this township 20 by Warren, Government surveyor, in 1839 (Warren's map being plaintiff's offer 3, filed in evidence) omitted 565.98 acres of land which were in place at the time and omitted by Warren and therefore, as the Government contends, remained legally as unsurveyed Government land even after Warren made his map (p. 3) and returned it with his field notes to the surveyor general's office. The omitted areas are shown on plat 11 and appear all around the border of Ferry Lake, but the greatest area omitted by Warren in the original survey lies in sec. 10. As stated already, the orginal survey and maps of this land by the Government was by Warren in 1839 and a replica of this map is in evidence (p. 3). This survey shows the area in the southwest fractional quarter, sec. 10, as containing 55.88 acres and represents section 9 lying west of section 10 as being no land at all. As a matter of fact, subsequent surveys made by Bristol in 1871 and by Kidder in 1916 confirmed the fact that at the time of Warren's survey the part of sec. 10 represented on his map as rather a long and narrow peninsular and as containing 55.88 acres actually contained 129.60 acres additional, and that Warren's map showing section 9

43 lying west of section 10 as water, actually had at that time 66.29 acres, entirely omitted from Warren's survey and 28.33 acres in section 16 which Warren's survey and map ignores altogether.

This brings me to the consideration of the fact claimed by the Government, to wit: Were the lands in section 10, aggregating 129.60 acres; in section 9, aggregating 66.29; and in section 16, aggregating 28.33 acres, actually in esse as high lands at the time of Warren's survey? To determine this matter the United States Government ordered a resurvey in 1913 and 1914 and an extension survey in 1916 and 1917 of the lands in township 20, range 16 west. This work was done under their instructions by Arthur D. Kidder, supervisor of surveys. The resurvey was made in 1913 and 1914 and the extension survey in 1916 and 1917. In the course of this survey Mr. Kidder and his associates reestablished and reproduced the survey made by Warren in township 20 N., R. 16 west, and made the official plats and maps herein filed (all approved by the department of the Government Land Office). On the trial before me, it is specially admitted in suits herein Nos. 1153, 1158, 1162, 1163, and 1164 that these surveys, maps, and plats by Kidder were executed according to the instructions of the Government Land Office and that such plats correctly reestablished and reproduced the survey made by Warren in township 20 N., R. 16 west, in strict accordance with the original survey.

Altho in this suit there is no admission in the record to the same effect, yet in the arguments, oral and in brief, there is no attack on the accuracy of the map of Kidder. Much interesting testimony was adduced by the Government to prove its contention that the lands in these suits were in actual place as high lands when 44 Warren made his survey but were ignored by Warren in making his survey and treated as nonexistant by him and also to prove that in the section to the west and south where Warren's map and field notes represent that the shore of Ferry Lake lay there was in point of fact high lands with the actual shore line distant 2,700 and 2,500 feet at furthest and 725 to 990 feet nearest.

This testimony was furnished not only by Kidder and his associates who actually did the work, but also by three distinguished scientists, one a geologist, Prof. Frank Leverett, of the University of Michigan, and two geologists, Prof. Lionel J. James, of the Department of Agriculture of the United States, and Dr. Henry C. Contes, professor of plant ecology in the University of Chicago.

One of the first things to determine in reproducing the Warren survey and to show the exact status of the land and water at that period and the period of 1812, when Louisiana came into the Union, was to determine the mean high-water mark of the Ferry Lake at that period or the contour line, as it is called, of the lake.

This was done by a study of the wave action on the border of the lake by the geologist, which consisted of shore marks and also of a study of the soil in the bed of the lake and on the upland borders;

also by a study of the tree growth on the shore and the lake and the various timber belts on the shore consisting of cypress; above this, overcup oaks and other trees which would not grow upon lands permanently covered by water. In this recognizance work they directed stakes to be set at the margin between the cypress timber and overcup oaks. It is established by Kidder's testimony that the high-water elevation of Ferry Lake in 1839 (the date of Warren's survey) and in 1812, when Louisiana was admitted into the Union, was
173.09 feet above Gulf level. Certain birthmarks as to the
45 high-water elevation of Ferry Lake with reference to the Gulf level (or sea level) have been established by Army Engineers on Red River and in this township 20 dating back as far as
and these were identified and used by Kidder in locating the 173.09 contour of the lake and the contour actually made by the surveyors around the entire border of Ferry Lake. When this contour was made it was found to practically coincide with 173.09 acres high-water level already independently located and staked by the geologist and ecologists. It was also found that Warren's survey was actually made by him with reference to this same level and contour. In returning the lines of Warren's survey following Warren's field notes and directions, Kidder found that in the termination of all the section lines to the lake shore Warren had stopped at the 173.09 level, and also that in retracing many of Warren's meander lines on the border of the lake he (Warren) had run them either exactly or approximately on the 173.09 contour (which had already been located and worked out by Kidder and the scientists as the shore before the above verification by Warren's own date). The 173.09 contour is confirmed by the Louisiana-Texas Boundary Commission in 1841; also by Moore's survey in 1846 and Boyd's survey of 1854, dealing with certain other lands on Ferry Lake.

A more detailed reference to the evidence and discussion thereof on this point might be made, but the fact that Warren recognized the 173.09 elevation as existing at the time of his survey is expressly made in the suits herein, Nos. 1153, 1158, 1162, 1163, and 1164, and is not seriously denied, since all evidence is in, by the other defendant litigants. The admission on this matter finally made in the
above suits is as follows:

46 "2. That the contour line of 173.09 feet above Gulf level established by the said Arthur D. Kidder, supervisor of surveys, as the mean high-water elevation of Ferry Lake in 1812, when Louisiana was admitted into the Union, and in 1839, when A. W. Warren made his survey of township 20 north of range 16 west, was in reality the mean high-water elevation of Ferry Lake and James Bayou, at such dates, and that the meander line of Ferry Lake and James Bayou, as run by said Kidder, follows said contour of 173.09 feet.

"3. That all of the tracts in controversy in these suits lie above the mean high-water elevation of Ferry Lake as it existed in 1812 and 1839.

"4. That the various tracts of land lying between the meander
ne of Ferry Lake and James Bayou as run by the said Arthur
. Kidder, and the line represented as a meander line upon the plat
said original Warren's survey, hereinabove referred to, includ-
g the tracts in controversy in these consolidated causes, were in
12 and 1839, at all times since said date, and now are, lands in
lace and of the same character, geological formation, and quality,
the lands surveyed by said Warren, as aforesaid, that said tracts
f land are now and were in 1812 and 1839, and at all times since
id dates, what is known in this locality as hill land, covered with
ative forest trees and vegetation characteristic of hill land, and that
ll of said lands were at the dates mentioned and at all times subse-
uent thereto uplands in character and existed as such at the time
f the said Warren's survey and in 1812.

"5. That the various tracts of land embraced in the exten-
sion survey of the said Arthur D. Kidder, spervisor of sur-
veys, and represented upon the plats aforesaid, including
he property in controversy in these consolidated causes, were not
ormed by accretion, or by the recession or reliction of the waters
f Ferry Lake or James Bayou since 1812." (See stipulation of
ounsel in cases mentioned, pages 2 and 3.)

On their basis of 173.09, Kidder and his associates were able by
aking Warren's field notes, to track him over the exact terrain
hich he walked in 1839 and found beyond a doubt in this section
hat when Warren reached nearly the point of the land shown on
is map as a narrow peninsula in the southwest quarter of section
0, in township 20 north, range 16 west, he carelessly left the shore
ine of the lake, running a short distance to the west on a line
hrough highlands well timbered, leaving the lake shore 725 feet
outh of him and then turning approximately north, ran his line
hrough high lands without reference to the actual shore line of
he lake, which in point of fact was at that time at least 2,770 feet
o the west of his survey. By so doing he ignored the presence of
he land in question in this suit, which at that time was in place
nd most of it seven feet higher than the land actually surveyed
by him, and made a map showing 55.88 acres as containing all the
land in the alleged southwest fractional quarter of section 10.
This is well illustrated by map 31 of plaintiff in evidence. The
land so omitted was topographically surveyed, its elevations taken
by Kidder and associates, and map of it shows it to have been even
above the 180-foot contour (which was the high-water stage at
that period of Red River and Ferry Lake) and none of it below
the 173.09 level on which Warren based his survey.

It is also, by the scientists already mentioned, proven that
48 this land so left out by Warren was at the time of his survey
well timbered high land with the growth on it of pine, oak,
and red gum, etc. It is proven by the scientists that this same
sort of growth was in this land as far back as 1800. From a com-
parison of Warren's map, plaintiff 3, in evidence, with Kidder's

survey as shown by map 31, plaintiff's evidence, page 9, it is apparent that the little peninsula mentioned by Warren as the fractional southwest quarter of section ten does not represent either the area or shape of the land, certainly in place at the time of his survey—nor does it even approximate the real area and shape. It is impossible to accept his southern or western line as a real meander of the shore. It will be seen from map 31 of plaintiff's evidence that the lots involved in this suit are far from the total area omitted by Warren in his survey of the western fractional one-half of section ten. The area of the land is 85.22 acres; the other lands omitted by Warren from his survey in this point approximate 118.46 acres plus a body of land lying north of the above land aggregating 280.87 acres surveyed by Bristol in 1871, all of which Warren's map returns as lake.

I find therefore as a fact that this land in question was and is not alluvial nor swamp nor overflowed nor formed by retection, recession or accretion, but it was highlands in place in 1812 and 1839.

I find also as a fact that the land in question was not surveyed by Warren in 1839 and should be classed in the category of unsurveyed public lands of the United States prior to the survey made by Kidder unless the defense set up by defendant shows a divestiture of the ownership of the Government since the Warren survey.

The defendant, the Producers Oil Company, claim under a lease from the Jeems Bayou Hunting & Fishing Club, in 1910,
49 and put down the oil wells on this land (the Texas Company bought the oil produced therefrom from the Producers Oil Co.). The Producers Oil Company therefore is bound to defend the title of the Jeems Bayou Hunting & Fishing Club. A consideration of the same and the special defenses set up is now in order.

The United States issued to S. D. Pitts on April 2, 1860, a patent "to the fractional southwest quarter of township 20 N., R. 16 west, according to the official field notes and plot of survey in the Government Land Office." The patent stated the land conveyed was 23 acres. As a matter of fact, Warren's map represents the fractional southwest quarter of section 10, containing 55.88 acres (there is a suggestion that Pitts actually intended to buy the southeast quarter of this section which is shown by Warren's map as containing 23 acres.)

But inasmuch as the title calls for the southwest quarter, this fractional southwest quarter according to Warren's field notes and directions actually contained approximately 48 acres (the volume of the 55.88 acres and about 7 acres as shown by Warren's map in this peninsular being in the northwest quarter of section 10). Pitts got the patent and paid for 23 acres.

As stated in the outset in this opinion, the lots or land in controversy here were not as a matter of fact embrased within the Warren line, but lie entirely out of the 48 acres which Pitts actually took under the Warren survey. The Jeems Bayou Hunting & Fishing

Club purchased from Pitts and succeeded to all the rights under his patent, no more and no less.

Certain preliminary defenses in this and the other cases were passed on by your honor and rejected. The contentions in the pleadings that the land in question was swamp and overflowed land and that it was uncovered by a recession of the water and belonged to Pitts and his succession in title as reparian owners is not pressed; in fact, the James Bayou Hunting & Fishing Club, in a suit No. 17707 on the docket of the District Court, Caddo Parish vs. Levee Board, denied that the land in controversy was ever swamp or overflowed land, and also denies "that the same has been formed either in whole or in part since its survey in the long ago." In other words, an admission that the land in dispute was actually in place as high land when Warren made his survey in 1839.

As above stated, I have already concluded that the land in dispute was in place as high land (equally as high and most of it higher than the land actually surveyed by Warren) when Warren made his survey, and I have also found that Warren did not actually survey this land, and that his survey, which purports to show a narrow peninsula at no point over 400 feet wide, with the lake on its western and northwestern boundary, in point of fact was not true; that the lake at the time of his survey was over half a mile away and at its nearest point on the south 725 feet distant; besides, there were lands in this section and section 3 subsequently surveyed by Boyd and Bristol which shows in Warren's map as water, which was actually high land in place, aggregating the whole 370.56 acres. In Warren's survey in this township, a grand total of 987.77 acres of high land in place at the date of his survey is shown to have been omitted from his map. Considering this to be true, defendants argue that the Government should be estopped from denying the verity of Warren's map at any time after third parties have bought, much less at this late day.

This leads to the law question involved. After a review of the authorities, my opinion is that the Government is not estopped when it is satisfied that there was manifest error or material variation between the traverse line of the lake represented on a map and the true border of the lake; but may order a survey and treat the land omitted from the first survey as public land, which has never been surveyed from the public domain.

The Supreme Court of the United States in 142 U. S. 161, states the law thus, as to the rights of the Government when it believes there is error or fraud in the surveys already made: "The power to make and correct surveys of public lands belongs exclusively to the political department of the Government, and the action of that department is unassailable in the court except by direct proceedings." 189 U. S. 35—Do 168 U. S. 589.

The case in 189 U. S., Kernan *vs.* Murphy, is directly in point. A survey was made by Howe, the U. S. surveyor, where the meander

line was at a considerable distance from a lake. The lake, in fact, existed, but not at the place represented on the plat. The result of the false meander was the omission of a large body of land between the so-called meander and the lake. The department ordered a new survey (as in the case at bar) and parties claiming the omitted body of land enjoined the execution of the survey, but the court rejected the injunction holding that the department not only has the power to make correction surveys, but "It must primarily determine what are public lands subject to survey and disposal." In a recent case decided by the Supreme Court of the United States, Lee Wilson & Co. *vs.* U. S., 245 U. S. 24, it is announced: "If in the making of a survey of public lands an area is through fraud or mistake meand'ed as a body of water or lake where no such body of water exists, riparian rights do not accrue to the surrounding lands, and the land department, upon discovering the error, has power to deal
52 with the meandered area, to cause it to be surveyed, and lawfully to dispose of it. Altho the general rule is that a meander line is not usually one of boundary, yet this meander line must have certain requirements stated below, and if it does not have those requirements it is a boundary line.

The case of Producers Oil Co. *vs.* Hanszen, first decided in the Supreme Court of Louisiana, 132 La. 691, and affirmed in the Supreme Court of the United States in 238 U. S. 325, settles the question as to whether Warren's so-called meander line in his survey of the southwest quarter of sec. 10, twp. 20, R. 16 (the land herein involved lying in that quarter section and actually in place in 1812 and 1839, as now) is to be treated as a true meander line, or whether it must be treated as a boundary line limiting the patentee to the actual area within the boundary. Both the Supreme Court of Louisiana and the Supreme Court of the United States decided that a surveyor's traverse fails in all respects as a meander line when it was made without regard to a body of water, and does not approximate its contour, or when substantial areas throughout the twp. lying between the so-called meander line and the body of water which it pretends to delineate have been omitted. In either case the traverse is a boundary of the adjoining patented lands and reparian rights do not accrue. Tested by this the so-called meander line established by Warren of this section, as above described, does not meet any of the requirements set forth by the Supreme Court of the United States, because:

(1) It is (at the point under discussion) not "an accurate survey of the meanderings of the watercourse."

(2) It does not show "the place of the watercourse and its sinuosities.

53 (3) It does not "define the sinuosities of the banks or the water."

(4) It is false, erroneous, and misleading in that it does not afford any reliable means of "ascertaining the quantity of the land in the fraction, subject to sale, and which is to be paid for

by the purchaser." 7 Wallace 272, R. R. Co. vs. Schumier. In 159 U. S., page 40, Howe vs. Smith, it is held that "It is unnecessary to speculate why it was that the surveyor (Warren in the case at bar) did not survey the omitted land; it may have been a mere oversight, but whatever the reason, the fact is obvious that no survey was made of that body of land." "Altho it was unsurveyed it does not follow that a patent for the surveyed tract (herein the Pitts patent) adjoining carries with it the land which, perhaps, ought to have been, but which was not, in fact, surveyed. The patent conveys only the land which is surveyed, and it is clear from the plat and the survey (i. e., the field notes, etc.) that the tract surveyed terminated at a point other than the real bank of the river, as the patent carries no land beyond the terminal fixed by the surveyor."

The land actually purchased and paid for by Pitts (as above stated, he actually got more than he paid for) was conveyed and covered by the description of courses and distances set forth in Warren's field notes and referred to in the Pitts patent, and the United States is concluded as to such land. Giving the patentee all of the land in areas stated in the patent and described and contained in lines and distances in such patent and which is all he paid for, protects him and his succession in title, and the Government should not be concluded by the fraudulent or gross negligence of its surveyor, 193 U. S. 167, Security Land & Ex. Co. vs. Burns (in 54 that case the real lake or water at the point in question was about half a mile away from the pretended meander).

Again, 232 U. S. 452, Gautier vs. Marian, "If the area in question designated and meandered as a lake was in truth high land susceptible of cultivation, it was as much public lands after the survey as if its true character had been reported by the surveyor; it was merely left unsurveyed (in that case there was no reference in the field notes or plat to the omitted areas). Do. 175 U. S. 300, 185 U. S. 30. In 232 U. S. 186-7, Chapman & Dewey L. Co. vs. St. Francis Levee Dist., "these public lands are patented as to the official plat of the surveyor returned to the Government Land Office by surveyors, but the notes, lines, landmarks and other particulars appearing on the plat must be considered in interpreting the patent.

The last expression of the Supreme Court in the above case of Wilson & Company vs. U. S. 245, U. S. 24, definitely settles the substantial point in controversy here. "If in the maps of a survey of public lands some area is through fraud or mistake meandered as a body of water or lake where no such body of water exists, reparian rights do not accrue to the surrounding lands, and the land department upon discovering the error has the power to deal with the meandered area, to cause it to be surveyed, and lawfully to dispose of it."

It is impossible therefore to escape the legal conclusion that lots contended for herein must be held to be public Government lands, the property of the United States, and that neither Pitts under his patent, nor the Jeems Bayou Hunting & Fishing Club nor its lessee

the oil companies have any title thereto. So holding, it remains to consider the claims of the Government for the oil and other minerals taken therefrom and the form of judgment that should be rendered against the defendant. The Government con-
55 tends that it is entitled to recover the value of oil extracted from the lots by the defendants, on the theory that they are all wilful trespassers and that the general rule is that the measure of damages for a tortious conversion is the value of the property converted with interest. My conclusion is that defendants herein are innocent of any intent to do wrong, and therefore the costs of extracting the oil and other minerals should be allowed. This embraces the cost of drilling and completing the wells and the cost of administering same in order to deliver the oil at the surface for delivery into commerce. This is the rule announced by our own Supreme Court in the case of Cook vs. Gulf Refining Co., 135 La. 609, and satisfies the equitable principle that no man should enrich himself at the expense of others.

Commonly speaking, minerals cannot be approved until brought to the surface and the true owner should undoubtedly be awarded their value at that stage, but not until the labor and expense of the person doing the work of bringing them from the bonds of the earth have been allowed where this person is acting in moral good faith tho under a mistaken idea as to the true conditions of the title. On this basis, I think the Government may recover not only from the oil company, defendants, who developed and brought to the surface the oil, but also from the marketing company who received the oil at the well from the producing company, and also from the persons to whom royalties were paid to the extent of such payment, C. C. of La., 2452, Thornton vs. Oil & Gas Co., page 43; 135 La. 990, Elder vs. Ellerbe.

Since all the evidence was put in there is no dispute as to the amount of the oil extracted and marketed from the wells up to June 30, 1917, inclusive. I find as a fact that the amount of oil
56 so extracted by the Producers Oil Co. and delivered to the Texas Company up to June 30, 1917, inclusive, to be 247,348.27 barrels, and that its value at the time of the extraction was $293,234.18.

I find that the cost of drilling and equipping the wells, operating same and delivering the oil at the surface, to be $113,912.45. The difference between these two items is $179,321.73, representing the net value of the production. Of this amount the Producers Oil Co. paid to the Jeems Bayou Fishing & Hunting Club $36,654.27 as royalties, leaving the Producers Oil Co. and the Texas Company the net amount of $142,667.46. These amounts must be returned to the true owner of the land, the United States.

I therefore recommend:

1. That the land in question be decreed to be the property of the United States.

2. That defendants be permanently estopped from transferring on same, or removing any oil or other minerals therefrom, and that they deliver the property to the United States and that the lease of said land by the defendants, Jeems Bayou Hunting & Fishing Club and the Producers Oil Company be annulled.

3. That the United States recover from the Producers Oil Co., and the Texas Company in solido, $142,667.46.

4. That the United States recover from the Producers Oil Co., the Texas Company, and the Jeems Bayou Hunting & Fishing Club, in solido, the sum of $36,654.27 for royalties paid by the said club.

5. I recommend further that the rights of the Government
57 be recovered from defendants of the value of all oil produced from the wells on the land since June 30, 1917, inclusive.

No. 1153, United States vs. Lane et al.
No. 1158, United States vs. Gulf Refining Co. of La.
No. 1162, United States vs. Southwestern Gas & Electric Co. et al.
No. 1163, United States vs. J. M. Walling et al.
No. 1164, United States vs. Robediere et al.

The above cases were consolidated for the purposes of trial and the following stipulations of fact were made by counsel for both sides:

1. "That the surveys made herein by Arthur D. Kidder, supervisor of surveys, and his associates and assistants, were made under instructions issued by the Commissioner of the General Land Office, as shown by letters of date September 27, 1913, and of December 1, 1916, from Clay Tallman, Commissioner of the General Land Office, to the said Arthur D. Kidder, supervisor of surveys, which will be offered in evidence herein by plaintiff, and that said surveys were made conformable to said instructions; that the surveys referred to herein are represented by certain official plats approved July 24, 1916, and March 28, 1917, which will be offered in evidence by plaintiff; that the plats made by the said Arthur D. Kidder, or under his supervision hereinabove referred to, correctly depict the surveys as made by him, and that all the figures, measurements, courses, distances, elevations, and topographic features shown on said plats are correct. It is also admitted that the said Arthur D. Kidder, supervisor of surveys, correctly reestablished and reproduced the survey made by A. W. Warren, deputy surveyor, of Township
58 20 north of range 16 west, in strict accordance with the said original Warren survey, the said original survey being represented upon the official plat approved August 31, 1839.

"2. That the contour line of 173.09 feet above mean Gulf level, established by the said Arthur D. Kidder, supervisor of surveys, as the mean high water elevation of Ferry Lake in 1812, when the State of Louisiana was admitted into the Union, and in 1839 when A. W. Warren made his survey of township 20 north of range 16 west, was in reality the mean high-water elevation of Ferry Lake

and James Bayou at such dates, and that the meander line of Ferry Lake and James Bayou as run by said Kidder follows said contour of 173.09.

"3. That all of the tracts in controversy in these suits lie above the mean high-water elevation of Ferry Lake as it existed in 1812 and 1839.

"4. That the various tracts of land lying between the meander line of Ferry Lake and James Bayou as run by the said Arthur D. Kidder, and the line represented as a meander line upon the plat of said original Warren survey hereinabove referred to, including the tracts in controversy in these consolidated causes were in 1812 and in 1839, at all times since said dates, and now are lands in place and of the same character, geological formation; and quality as the lands surveyed by said Warren, as aforesaid; that said tracts of land are now and were in 1812 and 1839 and at all times since said dates, what is known in this locality as hill land covered with native forest trees and vegetation characteristic of hill land, and that all of said lands were at the dates mentioned and at all times subsequent thereto uplands in character and existed as such at the time of the said Warren survey and in 1812.

59 "5. That the various tracts of land embraced in the extension survey of said Arthur D. Kidder, supervisor of surveys, and represented upon the plats aforesaid, including the property in controversy in these consolidated causes, were not formed by accretion, or by the recession, or reliction of the waters of Ferry Lake or James Bayou since 1812.

"6. That Ferry Lake is and was in 1812 and 1839 a navigable body of water.

"7. This stipulation shall not be construed as an admission upon the part of defendants that the land in controversy were not included within the survey made by A. W. Warren, as a matter of law; the defendants contending that under the Warren survey their titles extended to mean high water elevation.

"8. Plaintiffs and defendants shall have the right to offer evidence in these causes, and these admissions shall not be construed as preventing them, or any of them, from introducing additional evidence."

The total area involved in these suits is 79.95 acres. The Lane case involves lot 1 of sec. 3, T. 20 N., R. 16 west, and contains 5.67 acres. The Gulf Refining Company of La. involves 11.49 acres. The Southwestern Gas & Electric Co. involves 27.87 acres. The Walling case involves 12.72 acres. The LaRobediere case involves 22.20 acres.

It will be seen from the above stipulation that the land involved was of the same character as that in the Jeems Bayou Hunting & Fishing Club, i. e., high land with high-land timber growth, never at any time a part of the bed of the lake, but really the same quality and character of land as that actually within the Warren survey.

It is also admitted that Kidder's survey in retracing Warren's work is correct; and from this follows the admission that the various areas contended for shown as a result of Kidder's reproduction of Warren's work are correctly set forth, totalling 79.95 acres which were actually left out between the mean high-water mark of the lake and Warren's line. These admissions, which correspond with the evidence, which overwhelmingly proved the fact, put the cases in the same category, it would seem, with the Jeems Bayou Hunting & Fishing Club, wherein a finding in favor of the Government has just been made. Defendants, however, while conceding the above fact, contends these cases should be differentiated from the Jeems Bayou Hunting & Fishing Club case, because the areas involved in each of these cases are comparatively very small and that the maxim de minimis lex non curat should apply.

They contend that in these particular cases the lines run by Warren are substantially meander lines, admitting that, as contended for by plaintiff, at some points in skirting the shore of Ferry Lake Warren did abruptly (and technically speaking wrongfully) quit the shore line almost at right angles and deliberately left out, between his courses and the real senuosity of the lake shore, high timbered lands in place, but that he also embraced within his meander as land bits of water almost equalling the land left out, which resulted in the Government losing nothing, because in patenting the particular areas the Government got paid for as many acres as if Warren had carefully followed the contour and sinuosities of the lake—therefore, if Warren did wrongfully leave out between his meander and the actual shore the high timber lands, it is a case damnum obsque injuria so far as the Government is concerned.

61. On page 4 of their brief defendants say with respect to the Lane case, "With respect to the Warren survey Kidder admits taking the meander line as the boundary, there were included 0.9 acres of lake which never belonged to the United States, and there was omitted 8.38 acres of land which should have been included." Again, on page 5, "Kidder testifies that, taking the whole of the northern shore of Ferry Lake involved, sections 3, 10, 11, 2, 13, and 24 surveyed by Warren, the area of land lying between he Warren meander line and Kidder's establishment of the 173.09 ontour line was 69.56 acres, while the same meander line of Warn's included within his survey and shown as land an area actually ing in the lake and never belonging to the United States Governent of approximately 44 acres, thus reducing the actual acreage f land owned by the Government by the difference between 69.56 d 44 acres, or 25.56 acres of land." Also on page 5 the defendants on this point, "With respect to land contested for in suit 1164 being in sections 25 and 36, the area, 22.20 acres, is trivial when mpared with the quantity of land surveyed." Warren's map of ction 25 shows 29.25 acres; he left out 8.90 acres, or nearly one-ird of the land. The land contended for in sec. 24 is 11.49

acres. Warren's survey shows 114.80 acres not counting this 11.49 acres, or a shortage of about 10% of the actual high land. In section 13 the amount of land claimed as left out by Warren's survey is 27.87 acres; Warren's map shows 115 acres, nearly 16% of the actual area omitted. In sec. 10 the amount claimed herein as unsurveyed is 12.72 acres; the other land in this section left out as shown in Jeems Bayou Hunting & Fishing Club is 116.89 acres, or a total or 129.61. Warren's map shows 289.88 acres, which means nearly 30% of the actual high land in the section omitted by Warren.

62 Kidder describes the survey made by Warren of the land in sec. 3 as follows:

"In loot 1 of sec. 3 (United States vs. Lane), Warren began his traverse on the southern boundary of the section at a point which was then six feet under water. This point is not covered by the water now because the lake has receded. The second course emerges from the water, crosses the boundary of the lake, and begins to ascend the upland. His angle point 2 is above the 173.09 contour. The third course is through timber, undergrowth, and over highland above the 180-foot contour, and instead of being near the border of the lake is back in the woods and large timber. His fourth course left the highland and went back in the direction of the lake. The fifth course paralleled the border of the lake but was below the contour, being 6 feet lower than the mean water elevation. The end of the fifth course was exactly on the 173.09 contour. The difference in elevation between the first and second course is over 8 feet; that is, between angle points one and two."

Mr. Kidder says he sighted through the telescope along this course and found that he was actually "out from the lake to a point of lowland beyond the border of the lake. In measuring along the line we were going over the low hill which projects out into James Bayou, at this place running through upland, timber and undergrowth. There is nothing on the ground to indicate that the border of the James Bayou ever occupied that position."

The line does not parallel James Bayou and if intended as a meander it is absolutely incorrect, the error being manifest.

63 Warren began his traverse here below the mean high water elevation and returned to the bayou at a point which agrees exactly with the contour. The line runs over a hill, and as a result lots 1 and 2 of section 3 were omitted. These two lots contain an area of 8.38 acres in one compact body. Warren also omitted lot 3, containing 9.05 acres, making a total of 17.13 acres omitted in this section (57.64).

Plaintiff's brief contends as follows: Kidder describes Warren's survey of sec. 10 in reference to omissions of land contended for in lot 7 as follows:

"In lots 7 of sec. 10 (United States vs. Walling), Mr. Kidder found it necessary, in reproducing Warren's line through sec. 10, to begin at the meander corner on the eastern boundary of sec. 10, which

was set exactly on the 173.09 contour. After paralleling the lake for two courses from this point, Warren departed from it on the third course. Following the bearings and distances given in Warren's field notes, Mr. Kidder found that when he sighted through the telescope 'N. 78° W.' on the third course, the line ran back into the woods on high ground 8 feet above mean water elevation. The other courses were traced out in exact accordance with the Warren field notes. The turning points on the line bore no relation to the border of the lake and were made on upland a considerable distance from the water. On the last course Warren returned to the lake at the 173.09 contour. He departed from the lake at angle point 22, shown on the resurvey plat."

The same comment is made as to the way in which he departed from the shore line as respects the areas omitted in the other suits. In fact, an inspection of the supplemental map filed by plaintiff marked "F," and admitted by defendants to be absolutely correct, shows the angles and methods used by Warren in his de-
64 parture from the shore line in the cases complained of herein, and it can not be questioned that at the points named Warren failed to run a correct meander line showing the sinuosities of the lake shore, and at these points his line bears no true relation to the body of water, nor does it approximate a contour.

In reply to defendant's contention as to the comparatively small area involved in these consolidated suits, the Government's contention (which I find to be a fact) is that Warren's survey of township 20 N., R. 16 west omitted 1,047.67 acres of high land, 987.77 acres actually demonstrated as being omitted by subsequent corrective survey of Boyd, Bristol, and Kidder; the remainder of 59.90 acres left out "is made up of strips of ground between the traverse and the lake which were left out because the line was run at too high an elevation. In these instances, however, the traverse was run parallel with the lake and followed the contour with some degree of reason. Hence, no corrections were made in the survey in this respect. The actual water surface at the time of the Warren survey which was represented as land on his plat was 65 acres." Warren described the total area of this township as 10,328.09 acres, when in point of fact at the time of his survey and in 1812, when Louisiana came into the Union, the township actually contained 11,375.76 acres of high timber lands. Warren's omissions were nearly ten per cent of the whole land, and this area lying unsurveyed by Warren naturally remained as the property of the United States. Defendants, however, contend that the areas included in these suits, which undoubtedly lie outside of the actual so-called meander line of Warren and between it and the mean high-water mark of the lake shore, should be held to have passed to them under the patents obtained by their authors in
65 title because the meander lines of Warren of the Ferry Lake shore are strictly meander lines defining the sinuosities of the water, altho a pronounced *divigation* was made by Warren from the shore line at the points complained of. The defendants do not deny

that their authors in title got the acreage called for by the map of Warren and the patent; they only claim that taking the whole of the northern shore of Ferry Lake, including sections 3, 10, 11, 12, 13, and 24 surveyed by Warren, the area of land lying between the Warren meander line and Kidder's establishment of the 173.09 contour line was 69.56 acres, and that Warren's survey included within it about 44 acres as land which in fact was water; so the Government, as respects this part of the township, would only lose the difference, or 25.56 acres, which defendants virtually admit still technically remain in the Government as left out of the Warren survey. As above stated, there is no complaint by the original patentees of any of this land that they paid the Government for water instead of land and that they are entitled to relief from the Government; on the contrary, as far as area is concerned in the original patenting of these lands, the area marked on the map and actually surveyed by Warren was accepted as land and must be presumed as closed, and defendants can not now eke out any title to land, admittedly not within the boundaries of the property patented, on the ground that their ancestor in title did not get quite the acreage and therefore the present defendants are entitled to hold entirely new areas belonging to the Government as an offset. Title to new and separate areas of land can not be acquired in this way. Legal title to land from the sovereign Government can be acquired in only one way—by written transfer, commonly called a patent. Boldly stated, the proposition of defendants is in effect that if the Government has made a
66 gain by selling water for land, the real fact as to this contention as respects this township is as follows:

As stated above, Warren left out, as is now conceded, 1,047.67 acres of high land from his survey. In this township defendants contend that it would be equitable to permit the occupant of a piece of unsurveyed land in this township, which land is about equal to the water area previously sold in various parts of the township, to compensate and defeat the Government's claim for said unsurveyed land by replying to the suit, "you have already been paid for all the land actually in this township and I should keep this piece and you will really suffer no loss." As stated above, defendants can only keep the areas in question by showing title. They contend the area is so little, and when it was left out by Warren so utterly worthless, that the Government's claims should be dismissed on the ground of de minimis lex non curat. It is true that most of the cases dealing with the discussion of the difference between a meander line and a boundary line (the question herein involved) deal with larger areas than in these present consolidated cases, and in these areas the courts have not hesitated to apply the principles contended for by the Government in these cases. For instance, in the case of the Jeems Bayou Hunting & Fishing Club the area actually involved was 85.22 acres. In the survey of Warren, his intention to leave out of his survey lands which he should have included, according to law and his duty, was manifested just as plainly in his omission of 10 acres as in the

case of a hundred acres, and if in the case of the omission of a hundred acres the claimants' contention is rejected and the 100 acres held to be public land belonging to the United States, why should the sale be different as respects the claimant of 10 acres? It is true that ordinarily litigations do not arise unless the fight is worth while as to values, and it may be that the Government, but for the discovery of oil or gas in this region, would not have elected to bring suit when only 10 or 25 acres were involved, but its right to do so would have been in existence even tho it elected not to enforce it. As a matter of fact, these comparatively small pieces of land are now of great value, these in the above consolidated cases valued at over $100,000.00. It seems to me the rule repeatedly announced by the Supreme Court of the United States in defining the differences between a boundary line and a true meander line must and should be applied regardless of the superficial area involved. In these 17 suits the areas in question range all the way from 5.67 to 85 acres, and the proof is just as clear in the smallest as in the largest area that Warren's so-called meander lines (at the points complained of) violated the rules respecting such line, to wit, that they must in fact fairly represent the sinuosities of the body of water and practically approximate and parallel the same.

I find as a fact that as the points complained of these lines of Warren were not run according to the above principles, but that he arbitrarily in such instances left the shore at right angles thereto, blazed his way thro highlands heavily timbered, and then returning to the shore line some distance apart from his departure. The lands so left out must be held to be unsurveyed public lands, and I find in favior of the Government that the areas herein involved are in that category and should be decreed to be the Government's property.

For the reasons given in the Jeems Bayou Hunting & Fishing Club, I do not consider the defendants herein in moral bad faith, and consider that the expenses incurred by them in drilling, equipping, and administering the wells on the premises should be allowed in settling with the Government. The amount of oil extracted by the Producers Oil Company and taken away by the Texas Company I find as follows:

In 1153, United States vs. Lane et al., 42,735.23 barrels, and the value thereof, $36,430.73. Amount for drilling well and operating same, $16,047.23. The difference between the total value of oil and counterclaim, $20,383.50.

The royalties paid were:

To C. D. Lane, $1,517.95.

To Board of Commissioners, Caddo Parish Levee Board, $4,553.84.

I find there should be judgment against:

1. The Producers Oil Co. and Texas Co., in solido in the amount of $14,311.44, being value of total production less counterclaim and royalties.

2. The Producers Oil Co. and Texas Co. and C. W. Lane in solido the sum of $1,517.95, amount of royalties paid Lane.

3. The Producers Oil Co., Texas Co., and Board of Commissioners, Caddo Parish Levee Board, in solido, for $4,553.84, amount royalties paid Board of Commissioners, Caddo Parish Levee Board.

In suit 1158, United States vs. Gulf Refining Company, I find the total production herein to be $6,986.62, but the drilling and operating expenses were, as I find, $10,191.00 and no royalties paid. The well was not profitable and the Gulf Refining Co. actually lost money in the operation, so I recommend no money judgment against the defendants in this case, only a decree in favor of the Government as

owners of the land and entitled to possession thereof.

69 In United States vs. Southwestern Gas & Electric Co., No. 1162, I find the total value of oil extracted to be $29,946.9 (32,034.87 barrels), plus the pine line earnings, $3,203.48—total income secured by the Gulf Refining Co. from the well. The expense of drilling and operating was $12,784.68. The royalties paid to Caddo Oil Co., $933.30. The royalties paid to the Southwestern Gas & Electric Company, $747.99.

I recommend judgment against:

1. The Gulf Refining Co. of La., for $4,899.91, being difference between the royalties and counterclaims and total value of production, not including oil contained in pipe line.

2. Against the Gulf Refining Co. and Caddo Oil and Gas Co. in solido for $933.30, amount royalties paid to Caddo Oil & Gas Co. by Gulf Refining Co.

3. Against Gulf Refining Co. and Southwestern Gas & Electric Co. in solido for $747.99, amount royalties paid the Southwestern Gas & Electric Co., as to which no expense was incurred.

In 1164, United States vs. LaRobadiere et al.

In this case the oil produced by the Gulf Refining Company was $8,200.60 in gross value, with a counterclaim for expenses actually incurred for drilling and operatng of $12,771.25. There were royalties paid to Mrs. LaRobediere amounting to $3,075.21, and there should be judgment against her for that amount.

As the well was a losing venture for the Gulf Refining Co., I think no judgment in money should be given against it, but simply again

it giving the land as belonging to the Government.

70 It appeared in the course of the trial that an added royalty was paid to Blanchard, Barret & Smith of $1,205.07, and the right to litigate this matter is reserved to the Government.

No. 1163, United States vs. J. M. Walling et al.

I find the oil produced by the Gulf Refining Company of La. of the value of $77,278.79, with a counterclaim for drilling and operating, $20,643.87; difference between gross value of oil and the counterclaim, $56,634.87 for which judgment should go against the Gulf Refining Company.

It appeared in the trial that royalties had been paid by the Gulf Refining Co. to H. L. Heilperin, Natalee Oil Co., J. A. Thigpen and S. L. Herold, and the rights of the Government should be reserved as against them.

No. 1155, United States vs. Chas. J. Green et al.
No. 1160, United States vs. W. H. Enders et al.; consolidated.
No. 1165, United States vs. A. C. Loucks et al.

Two of the above cases were consolidated, the third tried separately, but they are not distinguished, however, from the other cases already considered by me, and the facts are practically the same and the law applicable thereto practically the same as in the cases already considered by me.

The Greene case involves lots 2 and 3, sec. 27, containing 65.77 acres, as shown by supplemental map of plaintiff marked "F." The defendants claim under a patent calling for 147.25 acres as per Warren's survey; they got all their acreage and are claiming the 65.77 acres never surveyed by Warren, or more than a third of the area actually purchased by Green from the United States; if defendants' contention is upheld he would have 213.03 acres when he actually bought and paid for 147.25 acres. The methods used
71 by Warren in leaving out of this survey high timbered lands above overflow in the cases already decided were used in this case, it being abundantly proven in these three cases that Warren ran his so-called meander line as far as 1,200 feet from the true shore, working his way through high lands well timbered. This is well illustrated on the map F, and also on the topographical map in evidence marked "Plaintiff B." The well was not profitable, the expense of drilling and operating incurred by the oil company exceeding the value of the oil, and no judgment for money should be made against the Amateur Oil Company, but the Louisiana Oil Refining Co. bought the production from the Amateur Oil Co., and out of the oil paid a royalty to Greene of $210.79, for which there should be judgment in solido against it and Greene. Afterwards the Louisiana Oil Ref. Company took over the well and paid a royalty to Greene of $186.78 and made a profit on its production of $557.75 net production after deducting the cost of production.

There should be judgment, therefore, against:

1. C. J. Greene and Louisiana Oil Refining Co. in solido for $210.79.

2. Louisiana Refining Corporation, $557.78.

3. Louisiana Refining Corporation and C. J. Greene in solido 185 65, and against all defendants recognizing the land as the property of the United States. In this case Greene virtually acknowledged that this land was United States property. He made on Jan. 22, 1913, a mineral location embracing fractional NW. ¼ of section 27, between the traverse line and the lake. In this location the land is referred to as "unsurveyed." He did same on June 17, 1910, "for all lands below the United States traverse in NW. ¼ sec. 27."
72 No effort to develop the land under this location was made, but this incident shows he did not consider that he was the riparian owner of the area in dispute.

No. 1160, United States vs. Enders et al. ...

This property embraces 66.20 acres, being lots 5 and 6 of sec. 9, and immediately adjoining the land in controversy in Jeems Bayou Hunting & Fishing Club, lying between said Jeems Bayou Hunting & Fishing Club land and Ferry Lake. There was no serious dispute of the Government's title, defendants' pleadings asserting they had no convictions on the subject, but that during 1910, veritably believing same was Government land, made a mineral location prior to the time of the withdrawal order of the President, December 15, 1908. The Standard Oil Co. entered a plea of nolle contendere, but admitted it had taken oil from the land under a division order and paid the purchase price to Heilprin and asked for judgment against him in case it was held. The defendants really make no serious claim to the property as owners, but content themselves under the mineral location. The proof of the Government's ownership is as complete as in the Jeems Bayou Hunting & Fishing Club case and for the reasons therein given, judgment recognizing the United States as owners of the area in question should be entered.

As to the claim on the mineral location, your honor has already decided that the withdrawal order of Dec. 15, 1908, was applicable to this land. So it appears defendants are without any right or legal title to the land. The Standard Oil Co. admit running oil from the land valued at $1,577.24 and paid out in royalties to the mineral locators $197.16. Judgment should go against the Standard Oil Company for $1,380.08 (with reservation of its rights to recover this amount and the $197.16 royalties against Heilprin, from
73 whom they purchased the oil) and against the defendants, Levi Cooper, W. T. Crawford, W. H. Enders, and Standard Oil Co. of La. in solido for $197.16. I recommend a judgment in favor of the United States for the land in question as prayed for by the petition, and for the above amount against the defendants.

No. 1165, United States vs. A. C. Loucks et al.

The area involved is 14.13 acres, being lot 1 of sec. 27. The evidence in the Greene case and Jeems Bayou case was offered herein besides the testimony of Kidder and others, who with him explored the status and character of these omitted areas, and for the same reasons heretofore given by me in the cases already decided I find the area in question was high timbered land omitted by Warren from his survey (the defendants traced title to a patent from the United States conveying 123.49½ acres, and the original patentee and the defendants got this full acreage independent of the area of 14.13 acres herein claimed) and that judgment should go in favor of the United States as being the owner of the said area as not having been entered in Warren's survey. It remains to consider what money judgment should be rendered.

For the reasons given in the early part of this report, citing Cook vs. Gulf Refining Co., 135 La. 610, and in case of Elder vs. Ellerbe et al., 135 La. 990, before any recovery by the Government for oil extracted, I think the cost of drilling and equipping the wells and operating same should be deducted.

Inasmuch as the well cost to drill and operate $8,439.37, and the total oil taken out was only $494.00, no judgment should go against the Producing Co., to wit, the Standard Oil Co., but out of the exploration and operation Loucks received 61.75 and the Gulf Refining Co. 52.42, and there should be judgment against them in favor
74 of the United States for those amounts and I so recommend.

In the discussion of each case under the title of "Quantum and basis of recovery," the contentions of the Government with respect to the amounts which should be allowed are set forth in detail. There should be a decree in favor of the Government in the respective sums heretofore stated. In addition to the recommendations previously mentioned, it is respectfully recommended:

1. That the lands involved in the respective suits be decreed by this court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

2. That the muniments of title under which the defendants claim may be declared null and void and held as nought in so far as they may include, directly or indirectly, the property in controversy in these suits, and, to that extent, that the said leases and transfers be cancelled and annulled. This recommendation, of course, does not include the patents on which the claims of riparian ownership are predicted, the validity of which patents is not denied by the Government. The patents, however, do not include any property in suit. This prayer of the bill of complaint relates to the leases and other transfers by which a conveyance of the various tracts was sought to be made.

3. That the lands described in the bills of complaint be adjudged and decreed to be the property of the United States, free and clear of all claims of the defendants, and that the possession of said land may be restored to plaintiff.

75 4. That said defendants during the progress of this cause, and finally and perpetually thereafter, may be enjoined from setting up any claim to said lands or any part thereof, and from creating any cloud upon the Government's title to the same, or to any of the oil, gas, or minerals on or under the same, and from going upon said lands, or in any manner using the same, or extracting oil or other minerals therefrom.

5. That a receiver be appointed by this court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities thereon used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas, and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and to preserve the same.

6. That defendants be ordered, directed, and required to make a full, true, and accurate accounting to plaintiff of all oil extracted from said lands since January, 1918, and to pay plaintiff the value thereof as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced since January 1, 1918, be reserved.

In all of the above recommendations for payment of money judgments I recommend that interest be allowed thereon at the rate of 5% per annum until paid, from the filing of this report.

Respectfully submitted,

E. H. RANDOLPH,
Master in Chancery.

76 Indorsed: Opinion and recommendations, E. H. Randolph, of the master in chancery. Recorded in Chancery Order Book, vol. 5, folio 559–587. Filed Jan. 11, 1919, 11:25 a. m.

Plaintiff's exception to master's report.

In the District Court of the United States for the Western District of Louisiana.

UNITED STATES OF AMERICA
vs.
A. C. LOUCKS ET AL. } No. 1165.

Now into this honorable court comes plaintiff, the United States of America, appearing herein through undersigned counsel, and excepts to the report of Hon. E. H. Randolph, master in chancery herein, in so far as the said report recognizes the defendants as innocent trespassers, and allows the counterclaims filed by them, for the following reasons, to wit:

1. The master erred in not finding and in not giving consideration to the fact that on December 15, 1908, the President of the United States, acting through the Secretary of the Interior, withdrew the land in controversy from settlement, entry, or other form of appropriation in order to conserve the public interest and in aid of such legislation as might thereafter be proposed or recommended, and that said withdrawal was ratified and continued in effect by the withdrawal order issued by the President, July 2, 1910.

77 The evidence showing such withdrawals consists of documentary testimony offered by plaintiff in the case of the United States vs. Sam W. Mason et al., No. 1172, on the docket of this honorable court, being plaintiff's Exhibits A, B, C, D, E, F-1, 2, 3, 4, 5, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, which said exhibits were offered in evidence in the case of the United States vs. Jeems Bayou Fishing & Hunting Club et al. No. 1157 (record in said cause p. 9), and all testimony in said case was offered by reference in the present cause (record in present suit p. 1). The court held in the said Mason case that the withdrawals included township

20 N., range 16 west, and prohibited mineral locations on the public lands described therein, which ruling is applicable to this suit, and was so recognized by the master in his report.

2. The well drilled by defendants on the land in controversy was not begun until the year 1913. (Testimony of James W. Neal, record 29.)

3. That no testimony was offered by defendants, nor otherwise adduced, to show that they acted in good faith in drilling and operating the wells in question. That the defense of innocent trespass is an affirmative defense, and the defendants did not prove, or attempt to prove, that they extracted and removed the oil from plaintiff's land through mistake or inadvertence, nor did they show that they acted on the advice of counsel, or in the belief that they were the owners of the property. The wrongful taking of the property of another, in the absence of all other evidence, raises a presumption that the trespasser took it intentionally, wilfully, 75 or in reckless disregard of the rights of the owner, and this presumption was not overcome, nor sought to be overcome, in any manner whatever by defendants.

Wherefore, plaintiff prays that these exceptions be sustained, and accordingly, that the counterclaim filed by defendants be rejected and disallowed, and that there be a decree in favor of the United States and against the defendants as follows, to wit:

(a) Against A. C. Loucks, the Star Oil Company, K. W. Brown, C. W. Brown, and the Gulf Refining Company of Louisiana in solido, in the sum of	$61.76
(b) Against K. W. Brown, C. W. Brown, Star Oil Company, and the Gulf Refining Company of Louisiana in solido in the sum of $432.32, being value of production, as shown by the master's report, less royalty of $61.76	432.32
Said sums aggregating	494.08

being total value of production, as shown by the master's report.

Plaintiff prays that in all other respects the said report and recommendations of the master be confirmed and made the decree of this honorable court. Prays for all orders and decrees necessary, and for general relief.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed: Plaintiff's exceptions to the master's report. Filed Jan. 30, 1919.

In the District Court of the United States for the Western District of Louisiana.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* A. C. LOUCKS ET AL., DEFENDANTS.	No. 1165. In equity.

Now comes the Gulf Refining Company of Louisiana, one of the defendants herein, and excepts to the report of E. H. Randolph,

Esquire, special master, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1. That the master has in his said report stated and certified that judgment should be rendered against this defendant in the sum of $52.42; whereas he should have reported and certified that no judgment should be rendered against this defendant.

2. The said master has in his report stated and certified that this defendant should be held liable for the pipeage charges on oil purchased by it from the other defendants; whereas he should have stated and certified that no such judgment should be rendered.

Wherefore, defendant prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,
Solicitors for Defendant, Gulf Refining Company of Louisiana.

80 Indorsed: Exception of Gulf Refining Company of Louisiana to the report of the special master. Filed Jan. 30, 1919.

Opinion of the court.

In re Government Oil Suits. Western Dist. of Louisiana.

Beginning in July, 1917, the United States filed eighteen suits against various persons to have certain land decreed the property of the United States, withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States; to cancel certain leases of the said land to various oil companies; to enjoin any further exploitation of the land; and for an accounting from the various parties who had drilled for oil, or purchased it from the drillers, or otherwise had come into possession of the oil.

The cases were referred to the Honorable Edward H. Randolph, as special master, and in due course he filed his reports. The land in controversy is all located in what is known as the Caddo Lake, or Ferry Lake, oil district, in Caddo Parish, Louisiana. In each case the master has reported in favor of the United States and has stated an account against the defendants who claim to own the land, against those who hold under oil leases and those who have purchased the oil extracted, either from the owners or lessees.

Certain fundamental facts govern all the cases. It appears that in 1838 most of the land in question was surveyed for the United States by Warren. In making his survey he undoubtedly left
81 out certain portions of land, inconsiderable as to acreage but now extremely valuable because of the underlying oil deposits. In 1916 the land was resurveyed by Kidder and the disputed areas included in the survey. Some of the defendants claim riparian rights to the land. There is no doubt, however, that all of the land included in the resurveys was high land in place at the

time the original survey of Warren was made, and he simply was in error in running his lines, which is not at all surprising considering the unsettled character of the land at that time and the difficulties surveyors must have encountered.

The land was withdrawn from entry first by a proclamation of President Roosevelt in 1908, and later by proclamation of President Taft in 1910. The land lies adjacent to Caddo or Ferry Lake and Jeems'or James Bayou. It is contended by some of the defendants that Warren intended the actual shore line to be the boundary line of his survey, and the lines he actually ran, or reported that he had run, were meander lines to determine the approximate areas of the survey. In some of the cases it is admitted that the land is public domain and the defendants claim under the mining laws. A further contention is made that *that* there was no ownership of the oil in the Government; that oil is different to minerals of a solid character and is not susceptible of ownership until brought to the surface and separated from the soil. The master has found against all of these contentions, and in clear and able opinions has disposed of them. It would be useless for me to attempt to supplement the report of the master, and in my opinion his findings should be approved. The master allowed interest from the day of the filing of his report. It is contended if ultimate judgment is against the defendants interest should be allowed only from the day of judgment. Again I must agree with the master. The filing of his report is tantamount to the verdict of a jury and it is usual to allow interest in Federal courts from the date of verdict rather than from the date of judgment. It is particularly urged that there could be no judgment against the various pipe lines who purchased the oil from the drillers on the theory above stated that the Government had no ownership in the oil until reduced to possession. I cannot agree with this contention, either. The ownership of the Government is somewhat different to that of a private proprietor and the integrity of the Government's title in any and all considerations demands that it should have a right of action against any one profiting by a violation of the laws of the United States intended as conservation measures.

The Government has excepted to the report of the master in allowing the defendants to set-off as against the judgment for the value of the oil the cost of producing it, contending that the parties were not in good faith. Considering the extreme uncertainty of the law and all of the facts in the case, I must decide this point against the Government. This disposes of the general contentions in all the cases.

In suit No. 1155, U. S. vs. C. J. Greene, it is contended in argument that the master's report was erroneous in rendering judgment against the Louisiana Oil Refining Corporation and not against the Amateur Oil Company, from whom it purchased. This objection is not made in the exceptions to the master's report filed. The master found there should be no judgment against the Amateur Oil Com-

pany because the well was not profitable and the expense of drilling and operating exceeded the value of the oil. He recommends judgment against the other defendants, however, because they actually got the oil. I see no reason to disagree with the conclusions of the master. The decree will not prevent an adjustment of equities between the parties.

83 In case No. 1160, U. S. vs. Henly et als., it is contended in argument on behalf of the Government that no counterclaim was plead or proved. I find no special exception in the record to this effect. The judgment as recommended is supported by the answers to interrogatories in the record.

The case of the U. S. vs. Thomas J. Stockley, No. 1166, is the only case presenting any difficulty, but considering the views expressed in overruling the preliminary objection, I think on the whole the master's report should be confirmed.

The labor of the court in these complicated cases has been much lightened by the master through his able report and by counsel through their fair and lucid arguments and briefs. All of them are entitled to the thanks of the court.

All exceptions will be overruled and decrees will be entered in all these cases in accordance with the suggestions of the master. Jurisdiction in each case will be retained for the purpose of adjusting any further equities betwen the parties.

RUFUS E. FOSTER, *Judge.*

July 15/19.
Opinion. Filed July 17, 1919.

84 *Decree.*

In the District Court of the United States for the Western District of Louisiana—Shreveport Division.

UNITED STATES OF AMERICA, *v.* A. C. LOUCKS, STAR OIL COMPANY, Gulf Refining Company of Louisiana.	No. 1165—In equity.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows:

I. That the report filed herein January 11, 1919, by E. H. Randolph, special master in chancery, be and the same is hereby approved and confirmed; and, accordingly:

II. That the land described in the bill of complaint, namely, lot one (1) of section twenty-seven (27), in township twenty (20) north, range sixteen (16) west, Louisiana meridian, of Louisiana, situated in the Parish of Caddo, Western District of Louisiana, as shown by plat of survey approved March 28, 1917, by Clay Tall-

man, Commissioner of the General Land Office, and ex-officio surveyor general for the State of Louisiana, be and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

III. That any and all deeds or instruments of writing of any kind or nature whatever, under which defendants, or any of them, may claim the said land, be decreed to be clouds upon plaintiff's title, and that the same be declared null and void, in so far as they may include directly or indirectly the above described property, and, to that extent, that said deeds or other instruments of writing be cancelled and annulled.

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of the said land shall be restored to plaintiff.

V. That the said defendants, namely, A. C. Loucks, Star Oil Company, K. W. Brown, Robert L. Stringfellow, C. W. Brown, and the Gulf Refining Company of Louisiana, shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas, or other minerals, on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and, accordingly, that a writ of injunction issue restraining, enjoining, and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of A. C. Loucks, and the said defendant is hereby condemned and ordered to pay to plaintiff, the full sum of sixty-one and 75/100 ($61.75) dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VII. That the United States of America do have and recover or and from the Gulf Refining Company of Louisiana, and the said defendant is hereby condemned and ordered to pay to plaintiff, the full sum of fifty-two and 42/100 ($52.42) dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VIII. That the said defendants be, and they are hereby, ordered, directed, and required to make a full, true, and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom,

and that all of plaintiff's rights to recover the oil produced from said land by defendants since January 1, 1918, be reserved.

IX. That the said defendants be, and they are hereby, condemned and ordered to pay all the costs of this suit.

X. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreveport, Louisiana, be, and he is hereby, appointed receiver to take possession of said land and of all wells, improvements, and drilling paraphernalia thereon, and any other property and instrumentalities on said land used for the purpose of drilling and extracting, storing, and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas, and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, condemned, and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells, and instrumentalities thereon, upon the approval of said receiver's bond by the clerk of this court. The said receiver shall, within 90 days
87 from the date of this decree, furnish bond, with good and solvent surety, to be approved by the clerk of the United States District Court in and for the Western District of Louisiana, in the sum of five hundred ($500.00) dollars, which said bond may hereafter be increased or reduced as the court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil, or property that may come into his hands as receiver. The said receiver shall surrender possession of said land and of all the property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of this court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the court to supervise, direct, and control the acts of the said receiver, to obtain such accounting from the said receiver as the court may order, to require the delivery to the United States of such land and property, and the accounting and payment to be made by the receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do and perform such other acts, in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises as the court may deem necessary.

Thus done, read, and signed in open court this 4th day of August, 1919.

RUFUS E. FOSTER,
United States Judge.

Indorsed: Decree. Filed Aug. 12, 1919.

88 *Petition for rehearing.*

In the District Court of the United States for the Western District of Louisiana.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
A. C. LOUCKS ET AL., DEFENDANTS. } No. 1165—In equity.

The petition of the Gulf Refining Company of Louisiana, defendant herein, shows:

1. That it is aggrieved by the decree entered herein and signed by your honor on the —— day of August, 1919, condemning it to pay to the plaintiff the sum of fifty-two and 42/100 ($52.42) dollars, together with five per cent (5%) per annum interest from January 11th, 1919; and avers that errors have been committed in the rendering of said decree in this, to wit:

2. That the court erred in condemning this defendant in the said sum of $52.42, when, according to the uncontradicted testimony and to the master's report, this defendant had made no profit whatever from the property. The evidence in the case shows, and the master so held, that this defendant had nothing to do with the drilling on said property, but purchased part of the oil produced by the principal defendant, which it sold at the same price at the Texas line to its affiliated company, the Gulf Pipe Line
89 Company plus a reasonable pipeage charge from the Caddo oil field to the said line, which amounted to fifty-two and 42/100 ($52.42) dollars. The principal defendant in this case, the Star Oil Company, was not condemned in any amount, since the cost of drilling, equipping, and operating the well in controversy exceeded the total value of the oil extracted therefrom. Since the principal defendant was not condemned, and since the pipe-line company would be liable only secondarily, there is no foundation for any judgment against this defendant; certainly none for condemning it for a pipe-line charge, which was not shown to have been in excess of a reasonable cost of transportation.

Wherefore, petitioner prays for a rehearing of this cause, submitting itself to any order that may be made by your honor should the petition be finally denied.

THIGPEN & HEROLD,
Solicitors for Defendant Gulf Refining Company of Louisiana.

Order.

Let the above petition be filed and let the plaintiff, through its solicitor, show cause before me on the first day of the next term of

court in Shreveport, Louisiana, why the prayer of the petition should not be granted.

RUFUS E. FOSTER,
United States District Judge.

August 4, 1919.

Indorsed: Petition for rehearing. Filed: August 13, 1919.

90 *Chancery order book, vol. 5.*

714.
United States District Court for the Western District of Louisiana.

UNITED STATES OF AMERICA,
vs.
A. C. LOUCKS ET AL. } No. 1165—In equity.

NEW ORLEANS, LOUISIANA, *December 4th, 1919.*

In this cause the motion for rehearing which was heretofore filed came on this day for hearing before Hon. Rufus E. Foster, the plaintiff being represented by Robert A. Hunter and the defendant by S. I. Herold, after argument and consideration by the court,

It is ordered, that this motion be overruled.

Plaintiff's petition & order for appeal & assignment of errors.

In the District Court of the United States for the Western District of Louisiana.

UNITED STATES OF AMERICA,
vs.
A. C. LOUCKS ET AL. } No. 1165—In equity.

To the honorable the Judge of the District Court of the United States for the Western District of Louisiana:

Now into this honorable court comes the United States of America, plaintiff in the above numbered and entitled cause, and, with respect, represents:

91 That on August 4, 1919, this court entered a final decree in said cause, and that in said decree there was, in part, error greatly to the prejudice and injury of plaintiff, as will more fully appear by the assignment of errors filed herewith. Plaintiff desires to take an appeal from said decree to the United States Circuit Court of Appeals of the Fifth Circuit.

Wherefore it is prayed that an appeal may be allowed to plaintiff in this cause from this court to the United States Circuit Court of Appeals for the Fifth Circuit, and that proper orders for the allowance of such appeal may be made by this court.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Order.

The foregoing petition for an appeal (with assignment of errors attached) being considered,

It is ordered, that the United States of America, plaintiff in the above numbered and entitled cause, be, and is hereby, granted and allowed an appeal herein from this court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 1st day of January, 1920.

RUFUS E. FOSTER,
United States Judge.

92 *Assignment of errors on plaintiff's appeal.*

In the District Court of the United States for the Western District of Louisiana.

UNITED STATES OF AMERICA
v.
A. C. LOUCKS ET AL. } No. 1165—In equity.

Now comes the plaintiff, the United States of America, and in connection with its petition for an appeal herein presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to wit:

I. The court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy the counterclaim of the Star Oil Company for costs and expenses incurred in producing said oil, and not entering a decree in favor of plaintiff for the total value of said oil.

II. The court erred in allowing to said defendant, as an offset or counterclaim, the cost of the production of said oil, and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had been withdrawn from any appropriation whatever by orders of the President of the United States, dated, respec-

93 tively, December 15, 1908, and July 2, 1910, which orders were issued for the purpose of conserving the public interest and in aid of pending and proposed legislation. The said well was drilled in violation of each of said orders and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precluded the consideration of any equitable benefit to the United States from the drilling and operation of said well.

III. The court erred in applying herein the rules relating to a case of innocent trespass, for the reason that there was no evidence to show that the defendants acted in good faith in extracting and removing the oil in question.

IV. The court further erred, in any event, in finding and holding that said defendants were entitled to deduct from the value of the

oil extracted from the land in suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit, or counterclaim.

Wherefore, plaintiff prays that the said decree be reversed in so far as it allows the said offset or counterclaim for the cost of drilling, equipping, and operating the well in suit, and that a decree be rendered and entered in favor of plaintiff herein for the full value of the oil extracted and removed from said land, as shown by the report of the master in chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to
94 enter a decree in favor of plaintiff for the full value of said oil, without offset or deduction of any kind.

Plaintiff further prays that, in any event, the costs of drilling and equipping said well be deducted and excluded from any allowance that may be made to defendants as an offset or counterclaim herein.

Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed: Plaintiff's petition for appeal, order allowing same, and assignment of errors. Filed Jan. 3, 1920.

In the District Court of the United States for the Western District of Louisiana.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
A. C. LOUCKS ET AL., DEFENDANTS. } No. 1165 In Equity.

To the honorable Judge of the District Court of the United States for the Western District of Louisiana, sitting within and for the Shreveport Division:

All the defendants in the above-entitled and numbered cause, feeling themselves aggrieved by the decree made and entered in this cause on the 12th day of August, 1919, and by the refusal of rehearing thereof on the 4th day of December, 1919, hereby appeal from said decree to the Circuit Court of Appeals for the Fifth
95 Circuit for the reasons specified in the assignment of errors, filed herewith, and now pray that their appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the record, proceedings, and papers on which said decree was based, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans.

And your petitioners further pray that the proper order touching the security to be required of it to perfect said appeal be made.

WILKINSON, LEWIS & WILKINSON,
THIGPEN & HEROLD,
Solicitors for Defendants.

Order.

Let the foregoing petition be granted and the appeal allowed, which shall operate as a supersedeas upon the defendants giving bond as required by law in the sum of two hundred and fifty dollars.

Jan. 10/1920.

RUFUS E. FOSTER,
United States District Judge.

Indorsed: Motion and order for appeal. Filed Jan. 12, 1920.
B

Defendant's assignment of errors.

In the District Court of the United States for the Western District of Louisiana.

UNITED STATES OF AMERICA, *vs.* A. C. LOUCKS ET AL., DEFENDANT.	No. 1165—In equity.

And now, on this the 10th day of January, 1920, comes the defendant Gulf Refining Company of Louisiana by its solicitors, Thigpen & Herold, and says that the decree entered in the above case on the 12th day of August, 1919, and the refusal of a rehearing thereof on the 4th day of December, 1919, is erroneous and unjust to the defendants; and for specification of errors, shows:

First. The court erred in holding that this defendant, which produced no oil from the premises in controversy, but merely purchased the oil produced by other defendants, incurred any liability in so doing.

Second. The court erred in holding that the purchaser of oil produced by the actual bona fide possessor of a tract of land can be held liable to the owner of the land on account of the purchase of such oil.

Third. The court erred in holding that this defendant was liable to plaintiff in any amount, when under the uncontradicted testimony the defendant has made no profit whatever from the property.

Fourth. The court erred in condemning this defendant to pay the sum of $52.42 upon the evidence merely that this defendant sold the oil in Texas for the price at which it was purchased from the other defendants herein, plus only a pipage charge to cover the expense of the carriage of said oil.

Fifth. The court erred in condemning this defendant in any amount when at the same time it held that the plaintiff had sustained no loss and exonerated the defendants who had produced the oil from any liability.

Wherefore, defendant prays that the said decree be reversed and the District Court directed to dismiss the bill; and for general relief.

THIGPEN & HEROLD,
Solicitor for Defendant.

Indorsed: Assignment of errors on the part of Gulf Refining Co. of La. Filed Jan. 10, 1920.

98 *Supersedeas bond on appeal.*

In the District Court of the United States for the Western District of Louisiana.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* A. C. LOUCKS ET AL., DEFENDANTS.	No. 1165 In Equity.

Know all men by these presents:

That we, A. C. Loucks, Star Oil Co., K. W. Brown, R. L. Stringfellow, C. W. Brown, and Gulf Refining Company of Louisiana, as principals, and the American Surety Company of New York, as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above cause, in the full sum of two hundred fifty dollars, for the payment of which, well and truly to be made, we hereby bind ourselves, our successors and legal representatives, firmly and in solido.

Dated at Shreveport, Louisiana, on this the 8th day of January, 1920.

The condition of the above obligation is such that,

Whereas on the 12th day of August, 1919, in the District Court of the United States for the Western District of Louisiana, in a suit pending in that court wherein the United States of America was plaintiff and A. C. Loucks, Star Oil Company, R. L. Stringfellow, C. W. Brown, K. W. Brown and the Gulf Refining Company of Louisiana were defendants, numbered on the equity docket 1165, a decree was rendered and signed against the said defendants and rehearing thereof refused on December 4th, 1919, and the said

99 defendants having obtained an appeal with supersedeas to the United States Circuit Court of Appeals for the Fifth Circuit;

Now, if the above-named principals shall prosecute such appeal to effect and answer all damages and costs if they fail to make their

plea good, then the above obligation to be void; otherwise to remain in full force and effect.

GULF REFINING COMPANY OF LOUISIANA,
By S. L. HEROLD, *Atty.*
STAR OIL COMPANY,
By J. D. WILKINSON, *Atty.*
R. L. STRINGFELLOW,
By J. D. WILKINSON, *Atty.*
C. W. BROWN,
By J. D. WILKINSON, *Atty.*
K. W. BROWN,
By J. D. WILKINSON, *Atty.*
AMERICAN SURETY COMPANY OF NEW YORK,
By R. L. GAFFNEY, *Atty. in fact.*
By J. C. TRICHEL.

Approved:
(SEAL.)

RUFUS E. FOSTER,
U. S. District Judge.

Indorsed: Supersedeas bond. Filed Jan. 12, 1920.

100 In the District Court of the United States, for the Western District of Louisiana.

UNITED STATES OF AMERICA, PLAINTIFF,
vs. No. 1165 in Equity.
A. C. LOUCKS ET AL., DEFENDANTS.

Now come, on this the 2nd day of February, 1920, all the defendants except Gulf Refining Co. of La., by counsel, Wilkinson, Lewis & Wilkinson, and say that the decree entered in the above cause on the twelfth day of August, 1919, and the refusal of a rehearing on the ninth day of December, 1919, is erroneous and unjust to them; and for specification of such errors shows:

First. The court erred in holding that the property in controversy is public lands of the United States.

Second. The court erred in holding that the premises in controversy is not a part of fractional northeast quarter of section twenty-seven (27), township twenty (20) north, range sixteen (16) west, patented by the United States to the ancestor in title of the said Louck.

Third. The court erred in holding that the meander line run by A. E. Warren, United States deputy surveyor, is a line of boundary.

101 Fourth. The court erred in holding that lot 1 of section 27, township 20 north, range 16 west, Caddo Parish, Louisiana, owned by defendant under a regular chain of title from the patentee thereof, does not extend to Ferry Lake, as shown by the approved official survey of A. W. Warren, United States deputy surveyor.

Fifth. The court erred in holding, without any evidence to support the finding, that Warren's meander of Ferry Lake in the fractional NE. ¼ or lot 1 of section 27, township 20 north, range 16 west, was not run to denote the boundary of the property as being the natural monument of Ferry Lake, but is in itself the boundary.

Sixth. The court erred in holding that there were any facts or circumstances shown in the evidence disclosing any intention to limit the property known as lot 1 or fractional NE. ¼ of section 27, township 20 north, range 16 west, to actual traverse lines or to cause such results to follow the survey.

Seventh. The court erred in condemning this defendant for the value of any oil produced from the premises in controversy.

Wherefore defendants pray that the said decree be reversed and the District Court directed to dismiss the bill; and for general relief.

WILKINSON, LEWIS & WILKINSON,
Solicitors for Defendants.

102 Indorsed: Assignment of errors on part of all defendants except Gulf Ref. Co. of La. Filed Feb. 16, 1920.

B.

Stipulation of counsel.

In the District Court of the United States for the Western District of Louisiana.

UNITED STATES
vs.
A. C. LOUCKS ET AL. } No. 1165.

Counsel for plaintiff and defendants do hereby enter into the following stipulation with regard to the contents of the record on appeal in the above numbered and entitled cause.

It having been agreed upon the trial of the above cause that the evidence theretofore adduced in the cases of United States v. Jeems Bayou Fishing & Hunting Club et al., No. 1157; United States v. C. J. Greene, Jr., et al., No. 1155; United States v. W. H. Enders et al., No. 1160, should be offered in this cause as far as practicable; and the said suits having likewise been appealed to the United States Circuit Court of Appeals of the Fifth Circuit, it is stipulated that the transcripts of appeal in the said causes and the exhibits and documents made a part thereof shall be considered as a part of the transcript in this suit in so far as applicable herein.

The clerk shall copy and incorporate into the transcript of appeal the pleadings, the note of evidence, and the exhibits, hereinafter named to wit:

103 Pleadings.

1. Bill of complaint.
2. Motion to dismiss filed by the Gulf Refining Company of Louisiana, and entry in equity journal showing ruling of court thereon.

3. Answer of Star Oil Co., K. W. Brown, and C. W. Brown to bill of complaint.
4. Plaintiff's reply to set-off and counterclaim.
5. Answer of A. C. Loucks.
6. Interrogatories propounded by plaintiff to Star Oil Company and Gulf Refining Company of Louisiana, and answers thereto, omitting petition and order for said interrogatories.
7. Plaintiff's motion for pro confesso against R. L. Stringfellow, and order thereon.
8. Order of reference.
9. Master's report in class A cases.
10. Exceptions filed by plaintiff and Gulf Refining Company to master's report, it being stipulated that no exceptions were filed by the other defendants herein.
11. The opinion of Honorable Rufus E. Foster, judge, confirming the master's report.
12. The final decree.
104 13. Petition for rehearing filed by Gulf Refining Company of Louisiana, and the entry in Chancery Order Book showing ruling of court thereon.
14. Plaintiff's petition for appeal, order thereon and assignment of errors.
15. Petition for appeal of all defendants, order thereon, assignment of errors and supersedeas bond on appeal.
16. Order of court relative to contents of record on appeal.
17. This stipulation.

Note of evidence.

Note of evidence taken upon hearing of merits before E. H. Randolph, special master in chancery, including all stipulations of counsel therein contained.

Exhibits.

1. Supplemental plat of township 20 north, range 16 west, marked "Plaintiff's A."
2. Supplemental topographic plat of township 20 north, range 16 west, marked "Plaintiff's D."
3. Photograph marked "No. 9," which said photograph shall be sent up to the Court of Appeals in the original.
4. Statement identified by the witness, James W. Neal, marked "Defendants' Exhibit No. 1," showing production and value of oil and cost of drilling and operating well.
105 5. Patent from the United States to Matthew G. Jackson, marked "Defendants Exhibit No. 2."
6. The exhibits, 3 to 14 inclusive, offered by defendants to show their chain of title (Note of Evidence, pages 33 to 35) shall not be included in the transcript in full, but the clerk shall make extracts

from same, showing the names of the vendors and vendees, the dates of the instruments and the description.

The clerk shall omit all other portions of said record.

Thus done and signed at Shreveport, Louisiana, this 10 day of March, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.
WILKINSON, LEWIS & WILKINSON,
THIGPEN & HEROLD,
Attorneys for Defendants.

Indorsed: Stipulations of counsel as to transcript. Filed Mar. 12, 1920.

106 *Note of evidence.*

District Court for the Western District of Louisiana, at Shreveport, Louisiana.

UNITED STATES
vs.
A. C. LOUCKS ET AL. } No. 1165.

Evidence taken before the Honorable E. H. Randolph, special master, in the above cause, commencing on May 6th, 1918, in the United States courtroom, at Shreveport, Louisiana.

R. B. Cook was appointed stenographer to report the evidence and qualified by taking the proper oath.

Appearances: Hon. R. A. Hunter appeared on behalf of the Government; Messrs. Alexander & Wilkinson and Thigpen & Herold appeared for defendants.

It is stipulated and agreed between counsel for plaintiff and defendants that all testimony taken in the case of the United States vs. Jeems Bayou Fishing and Hunting Club, also the testimony taken in the case of the United States vs. Charles J. Greene, Jr., et al., and the case of the United States vs. W. H. Enders et al. may be offered in this case, as far as applicable.

Counsel for plaintiff offers in evidence, as far as applicable, all of the testimony, both oral and documentary, taken in the case of the United States vs. Jeems Bayou Fishing and Hunting Club, No. 1157; also in the case of the United States vs. C. J. Greene, Jr.,
107 et al., No. 1155, and the case of the United States vs. W. H. Enders et al., No. 1160, said offering being made under the agreement hereinabove set forth, the evidence offered being that taken on behalf of the United States, plaintiff in said causes.

Counsel for plaintiff offered in evidence copy of the supplemental plat of township twenty north, range sixteen west, marked "Plaintiff A," said plat having been approved by the Commissioner of the General Land Office March 28th, 1917.

(Filed in evidence and marked "Exhibit A.")

Counsel for plaintiff offered in evidence supplemental topographic plat of township twenty north of range sixteen west, approved by the Commissioner of the General Land Office March 28th, 1917.

(Filed and marked "Exhibit B.")

Said offers above mentioned to include the memoranda, legend, and all data contained on said plats.

ARTHUR D. KIDDER, a witness for the plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. HUNTER:

Q. Mr. Kidder, you are supervisor of surveys?

A. I am.

Q. Of the General Land Office?

A. Yes, sir.

108 Q. Are you the Mr. Arthur D. Kidder, supervisor of surveys, who testified in the case of the United States vs. Jeems Bayou Fishing and Hunting Club, No. 1157?

A. I am.

Q. Likewise in the suit of the United States vs. C. J. Greene, Jr., and the suit of United States vs. W. H. Enders et al.?

A. Yes, sir.

Q. Have you made an examination of the land in controversy in this case in section twenty-seven, township twenty north of range sixteen west?

A. I have.

Q. When was that examination made, Mr. Kidder?

A. I made the first examination of that particular area in the fall of the year 1913. I was on the ground many times from October, 1913, until May, 1914, during the period of my first examination in that township. I was on the land again many times during the month of December, 1916, and January, 1917. I was on the land again in the month of December, 1917.

Q. Was the survey which was made by you executed under your supervision and directions?

A. It was.

Q. That survey is represented on the supplemental plat approved March 28th, 1917, is it not?

A. Yes, and further represented on the resurvey plat approved July 24th, 1916, which has been introduced in evidence in the case of the United States vs. Jeems Bayou Fishing and Hunting Club, and marked "Plaintiff's Exhibit 8."

Q. State whether or not the survey made by you as represented on the plat is true and correct.

A. It is.

109 Q. At the time of the resurvey, or prior to the examination and approval of the resurvey plat just mentioned, did

you make an examination of Ferry Lake in order to ascertain the mean high-water mark of the water as it existed in 1812 and 1839?

A. I did.

Q. At what elevation did you find the water to be in 1812 and 1839?

A. The mean high-water elevation of Ferry Lake during the period of the great raft in Red River, which included the years 1812 and 1839, was placed at 173.09 above mean Gulf level.

Q. You have testified in regard to the reasons why the elevation was fixed at 173.09, have you not, in the other cases above referred to?

A. I have.

Q. In the case of the United States vs. Jeems Bayou Fishing and Hunting Club?

A. Yes, sir.

Q. Does your testimony with relation to that tract and in regard to the mean high-water elevation apply likewise to the area involved in this suit?

A. I would say yes, in every general particular.

Q. Referring to the property involved in this case, please state whether you know the character of that land?

A. I do.

Q. What is the character of the land involved in this suit?

A. This land has a clay formation and similar to the adjacent land included in section twenty-seven surveyed by A. W. Warren in 1839, and in the particular area involved in this suit, lot one of section twenty-seven, the land has, as I would say, a gentle, rolling surface. There is a growth of scattering timber. That tim-
110 ber is similar to the species found on the surveyed lands in that vicinity. The land is well drained, and in every general particular it is similar to the adjacent surveyed land. There can be no distinction whatever drawn between the land included in lot one of section twenty-seven and the adjoining land in section twenty-seven surveyed by A. W. Warren in 1839.

Q. Was it land similar in timber growth and topography to the land that Warren included in his survey?

A. Yes, sir.

Q. Adjacent land that he included?

A. Yes, sir.

Q. What is the area of the tract involved in this case Mr. Kidder?

A. Fourteen and 13/100 acres.

Q. State whether or not the land involved in this suit adjoins the land involved in the suit of the United States vs. C. J. Greene, Jr., et al., which has just been tried?

A. It does.

Q. Both tracts situated in the same section?

A. Yes, sir.

Q. How does lot one of section twenty-seven compare in its general characteristics with lots two and three of section twenty-seven involved in the Greene case?

A. It is very similar in every respect. The extreme elevation of the land in lot one of section twenty-seven lacks about ten feet of being as high as the extreme elevation of lots two and three of section twenty-seven, but otherwise the land is similar. The timber growth is more scattering, however, though the species are practically the same.

Q. Are the elevations of the land shown on the supplemental topographic plat marked "B"?

A. Yes, sir; is shown with the contour line of five feet.

111 Q. What is the elevation of the land shown on that plat?

A. They range from 173.09 to 190 feet above mean Gulf level.

Q. State whether or not any land in section twenty-three lies between lot one of section twenty-seven and the lake.

A. Yes, sir; there are two lots of section twenty-three, designated as lots one and two, embracing in all 17.74 acres, that lie between lot one of section twenty-seven and the border of Ferry Lake on the north.

Q. Did A. W. Warren, surveyor, survey any portion of section twenty-three?

A. No, sir.

Q. You have included in your survey the lots in section twenty-three, which you have just mentioned?

A. Yes, sir.

Q. Did he establish the section line between sections twenty-seven and section twenty-three?

A. No, sir.

Q. Mr. Kidder, what is the total area omitted by A. W. Warren from his survey of sections twenty-seven and twenty-three?

A. Ninety-seven and 64-100 acres.

Q. State whether or not the land involved in this case was a part of the 97.64 acres which you have just mentioned.

A. It is.

Q. State whether or not this area of land that you have given as 97.64 acres is one compact body of land.

A. It is one compact body of land. There is no natural division whatever. The only division is an arbitrary division determined by a survey of certain section lines, otherwise there is no division whatever.

112 Q. Otherwise there is no division whatever?

A. No, sir; no topographic division whatever.

Q. State whether or not the area of 97.64 acres, of which the property in controversy forms a part, was omitted from the survey of that twonship by A. W. Warren in 1839.

(Objected to by counsel for defendants as calling for a legal opinion, which will be determined by the facts of the case.)

(Objection overruled.)

(To which ruling counsel for defendants except and ask that this stand in lieu of formal bill of exceptions.)

A. It was.

Q. Was that omission made by virtue of the running of the meander line, or so-called meander line, in a certain position?

A. Yes, sir.

Q. At a certain elevation?

A. There is no controlling factor as to the elevation of the Warren meander line or traverse line of section twenty-seven, but our remarking of that traverse line on the ground determined the position of the line as established by Warren and indicated the amount of land omitted by Warren from his survey.

Q. Did you correctly retrace the Warren line throughout this township?

A. We did.

Q. Did you find certain undisputed corners and carry your survey from them?

A. We did. Many places in this particular location we de-
113 termined the position of the original bearing trees on the Warren boundary of section twenty-seven at the quarter corner between sections twenty-seven and twenty-eight.

Q. Were the original bearing trees the same trees mentioned in Warren's field notes of his survey?

A. They were.

Q. Are you satisfied, then, that you have correctly reproduced and retraced the Warren survey?

A. Yes, sir.

Q. And you find, after having done so, that he omitted the area above mentioned, includin gthe land involved in this suit?

A. Exactly.

Q. Mr. Kidder, what have you to say with regard to the correctness of the so-called meander line of A. W. Warren in section twenty-seven, the running of which caused of the omission of the area you have mentioned?

A. Warren's meander line in section twenty-seven presents two widely different conditions. His meander line or traverse line from the eastern boundary of section twenty-seven and running northwest to angle point 5 is a very correct meander line and follows the border of Ferry Lake with precision for those five courses, and the Warren meander line or traverse line as surveyed by Warren is substantially the border and parallels the actual border of Ferry Lake and is a very short distance removed from it, leaving a very narrow strip of land between the meander line and the actual shore line. At angle point No. 5 of section twenty-seven Warren turns at an angle away from the border of Ferry Lake at almost right angles and ascends to ground seventeen feet above the mean high-water elevation of Ferry Lake; through the balance of his survey and traverse line through section twenty-seven his line is one line on high upland, with turning points far re-
114 moved from the border of Ferry lake, and not selected with regard to the border of Ferry Lake in any particular, and

traverses ground as high as twenty-seven feet above Ferry Lake and descends in places into ravines and then ascends again on the opposite side, showing no relation whatever to the actual border of Ferry Lake. I want to say, further, if Warren had continued around the border of Ferry Lake, and followed the same controlling factors he apparently observed in the first five courses, he would have included the identical land involved in this suit and other land in that compact body which were omitted. The principals observed by Warren in running the first five courses of his meander line of section twenty-seven were correct in every particular. That line follows the border of the lake at the foot of a sharp slope of the ground and parallel the border, and at angle point No. 5 his traverse line ascends a bluff and departs from the border of Ferry Lake.

Q. State whether or not that point where he leaves the border and departs from it at an angle?

A. The disagreement is almost at right angles.

Q. Does the Warren traverse line through section twenty-seven follow the border of Ferry Lake or any other body of water?

A. His first five courses do, but the balance, as shown on plaintiff's Exhibit B introduced in this case, from angle point No. 5 to angle point No. 8, inclusive, then to the western boundary of section twenty-seven, the line does not follow the border, or any topographical feature of a border, that could be reconciled with the border of Ferry Lake or any other body of water or water course.

Q. Does the traverse line of Warren of section twenty-seven, parallel the shore of the lake?

115 A. For the first five courses, yes; for the last four courses, no; it does not parallel the border of the lake in any particular.

Q. With the exception of the first five courses, state whether or not the line marks the conformation of the lake, or the sinuosities of the lake?

A. No; there is no relation whatever between the Warren traverse line through the last four courses and the sinuosities or conformation of the border of Ferry Lake.

Q. Referring to the first five courses of the traverse line, state how far those courses agree with the mean high-water elevation of Ferry Lake as established by your survey. Is there a substantial agreement?

A. There is a very close agreement. Warren's traverse line follows the contour and in places actually touches the 173.09-foot contour, and most of the way only slightly above it in elevation and a very short distance removed horizontally.

Q. If Warren had continued his traverse line at the same elevation and direction as his first five courses, would he or not have included in his survey the 97.64 acres which he omitted therefrom in sections twenty-seven and twenty-three?

A. Yes. If he had followed the same contour and the other controlling features, such as the foot of the bluff, and the contour of the

forest growth, which is to be found along that line, he would have included all of the 97.64 acres subsequently included in the extension survey.

Q. Mr. Kidder, it has been testified in this case, or the case of the United States vs. C. J. Green, Jr., et al., that the Warren traverse line through section twenty-seven, approximately a mile in length, 12-13ths of a mile?

A. My recollection is that that related more particularly to the distance from angle point 5 west through the section.

116 A. Well, referring to angle point No. 5, running westerly through the section, along the Warren so-called meander line, what is the distance approximately?

A. The length of the Warren traverse line from angle point No. 5 of section twenty-seven west to the western boundary of the section is approximately 4,290 feet.

Q. What proportion of a mile is that?

A. That is approximately 4-5ths of a mile.

Q. What is the approximate length of the meander line of the lake, as established by you around sections twenty-three and twenty-seven, from angle point No. 5 to the western boundary of section twenty-seven?

A. Following the contour 173.09, above mean Gulf level, from angle point No. 5 in section twenty-seven, northwesterly through section twenty-seven into section twenty-three, and again into section twenty-seven, through to the western boundary of the section, the approximate distance is 6,800 feet.

A. A distance of more than a mile?

A. A distance of a little more than a mile, a mile and a quarter approximately, estimating it with no attempt to give the exact result.

Q. The area omitted by Warren by the running of that traverse line does not only consist of lot one of section twenty-seven?

A. No, sir; it includes one compact body of land designated as lots one, two, and three of section twenty-seven, and lots one and two of section twenty-three.

Q. In what direction did Warren run when he established the traverse line; did he begin at angle point No. 5 and run westerly or northwesterly?

A. Warren erroneously turned at angle point No. 5. Up to that point he was running northwesterly through section twenty-

117 seven, following the border of the lake. At angle point No. 5 the field notes show W. 6th meander course to have a bearing S. 70 degrees W. The actual border of the lake at this point is N. 8 degrees west, the difference being 62 degrees in angle.

Q. Are you referring, Mr. Kidder, to that portion of the traverse line from angle point No. 5 to angle point No. 6?

A. I am.

Q. That line departs from the lake at an angle?

A. Yes, sir.

Q. Does it traverse high ground between angle point No. 5 and angle point No. 6?

A. Yes, sir.

Q. What elevation?

A. From angle point No. 5, which is only a little above the 173.09-foot contour, the ascent is seventeen feet in this one course.

Q. What have you to say in regard to the other courses of the Warren traverse line?

A. Warren's seventh meander course ascends to an elevation of twenty-seven feet above the lake level. The 8th meander course runs down into the bottom of a ravine to an elevation of about seven feet above the border of the lake, and immediately ascends on the opposite side of the ravine to an elevation of thirty-seven feet above the level of the lake; that is the elevation of the 8th angle point. At the ninth angle point that course descends into a ravine at an elevation of about seven feet above the border of the lake and immediately ascends again on the opposite side of the ravine to an elevation of about twenty-two feet above the border of the lake, and descends again to the western boundary of section, at which point the boundary of the section and the traverse lines intersect at the top of the bluff on the border of Ferry Lake.

118 Q. What is the approximate length of the entire area omitted by Warren from his survey of sections twenty-three and twenty-seven?

A. The tract of land in sections twenty-three and twenty-seven omitted by Warren may be compared to an irregular rectangle, approximately four thousand feet in length and one thousand feet in width.

Q. And embraces an area of 97.64 acres?

A. Yes, sir.

Q. Mr. Kidder, state whether or not the Warren traverse line through sections twenty-seven and twenty-three is or is not a correct meander of Ferry Lake.

A. Warren's traverse line does not invade section twenty-three at any point, and the first five courses of the Warren traverse line in section twenty-seven, counting from the eastern boundary of the section, is a correct meander line. The last four courses of Warren's traverse line of section twenty-seven, connecting with the western boundary of section twenty-seven, is an incorrect meander line.

Q. State whether or not the error as to these courses is apparent.

A. The error is very apparent.

Q. Would you or not call it a manifest error?

A. I would call it a manifest error.

Q. Now, referring to the first five courses of the Warren traverse line, I will ask you to state whether or not you correct that line by your survey?

A. No, sir; that portion of the Warren meander line was allowed to stand without correction.

Q. You did not include any land that he might have omitted from those courses?

A. No, sir; no land was included between his first five course in section twenty-seven and the actual shore line of the lake.

119 Q. Your omissions, the omissions which you supplied in your extension survey, relates to the land omitted by the other courses?

A. It does; that is, all opposite the last four courses of the Warren meander line of section twenty-seven, that connect with the western boundary of section twenty-seven.

Q. Mr. Kidder, from your knowledge of the land itself, and in your opinion as a surveyor, I will ask you to state whether or not the land in controversy in this case, including the other land omitted by Warren in section twenty-three and twenty-seven, was or was not land in place in 1812 and 1839?

A. This land was in place in 1812 and 1839, in practically the same condition we see it to-day.

Q. Referring to Warren's traverse line, I will ask you to state whether or not the land on both sides of the line is practically the same as to topography and timber growth?

A. The land on both sides of the Warren traverse line for the last four courses in section twenty-seven is absolutely the same; there is no difference whatever to the north or south of Warren's traverse line.

Q. State whether or not there is anything in the timber growth in this area or the topography of the ground to justify Warren's running the line in the position and at the elevation at which it was run?

A. Absolutely none.

Q. I will ask you to please refer to Warren's field notes, embracing the survey of section twenty-seven, and state whether or not there is any statement in the field notes indicating, except by inference, that he run that traverse along the margin of the lake?

(Objected to by counsel for defendant on the ground and for the reason that the field notes are the best evidence of what they show.)

120 (Objection overruled.)

(To which ruling of the court counsel for defendants except and asks that this note stand in lieu of formal bill of exceptions.)

A. The field notes of the line between sections twenty-six and twenty-seven, found on page 25 of plaintiff's Exhibit No. 5 in the case of the United States vs. Jeems Bayou Fishing and Hunting Club, "43.50 to the lake set post"; also on page 26 of the same book of field notes, on the line between sections twenty-seven and twenty-eight, at the distance of forty chains, which is half a mile, the field notes read, "To the lake set post." Those are the only references whatever to the border of Ferry Lake. On the same page 26 the heading of the meander or traverse line is given as "Traverse front section," front of section 24, etc., and on page 29 of the same book

of field notes, with reference to section twenty-seven, the field notes bear the same heading, "Front of section 27"; that is followed by nine courses and distances which are Warren's traverse courses through fractional section twenty-seven, but there is no specific statement there that he is following the border of Ferry Lake.

Q. Mr. Kidder, please identify on the resurvey plat marked "Plaintiff's Exhibit No. 8," offered in evidence in the case of the United States vs. Jeems Bayou Fishing and Hunting Club, the place where Warren mentions going to the lake to establish the meander course.

A. This place is on the east and west boundary of section twenty-seven, at the terminating point of the section line, where the section lines are joined to the terminating point on the border of Ferry Lake, which is a fact, and which is borne out by the conditions on the ground.

121 Q. I will ask you to state, then, whether there is anything in the field notes that it represents a traverse line other than inference to indicate the meander line he was running according to the field notes was the meander of the lake?

A. That is inference only?

Q. What is a traverse line?

A. A traverse line is an irregular, broken line run in the process of a survey for the purpose of connecting distant points, and may be run without regard to the topography of the ground which it traverses.

Q. What is the relation of a traverse line and a meander line, if any?

A. I might say that every meander line is, in a sense, a traverse line, but all traverse lines are not meander lines. For a traverse line to comply with the requirements of a meander line it must follow the sinuosities of the body of water which is being surveyed.

Q. I will ask you finally whether or not Warren's traverse line followed the sinuosities of the lake or any other body of water?

A. The first five courses in section twenty-seven carefully followed the sinuosities of Ferry Lake, counting from the eastern boundary of section twenty-seven northwest to his angle point No. 5. The last four courses from angle point No. 5 southwesterly to the western boundary of section twenty-seven do not follow the sinuosities of the border of Ferry Lake, or any other lake or stream or watercourse of any description.

Cross-examination:

(Counsel for defendants moves to strike out all of the testimony of the witness relative to the errors of the survey made by
122 A. W. Warren, on the ground and for the reason there is no allegation in the bill of complaint justifying the same, and not in response to any allegation *of* of the plaintiff's bill of complaint, in that it is not charged that Warren made any error or was actuted by any fraud in running said line.)

(Objection overruled.)

(To which counsel for defendants except and reserve a bill of exceptions.)

By Mr. WILKINSON:

Q. Mr. Kidder, the little piece of land in dispute of 14.13 acres, was that included in the Warren survey of the northeast quarter of section twenty-seven?

A. No, sir.

Q. The meander line or traverse line which he ran in section twenty-seven excludes that, as I understand your testimony?

A. Yes, sir.

Q. The meander line which he did run was run some distance, according to your testimony, from the actual high-water line of the lake?

A. Yes, sir; that is true.

Q. Was it not run in the same general direction—was it not run parallel with the line of the lake, though some distance from the line of the lake?

A. Not in its general direction; I would say that it does not parallel the actual border of the lake. I will qualify that answer, however, by saying that certain of the meander courses could be replaced, and adjacent to points along the actual lake border that would be practically parallel, but there is no uniform agreement—you take the successive courses, six, seven, eight, and nine, can not be put down on the actual border of the lake in the same succession and in the same direction and the same length and fits points on the border of the lake, by any possible adjustment.

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Q. Beginning at angle point No. 5, what direction did you say he run?

A. South 70 degrees west.

Q. Should have run according to your contention?

A. North forty-eight degrees west.

Q. The northeast quarter of section twenty-seven is a fractional quarter?

A. Yes, sir.

Q. Would be so if this land was included?

A. Yes, sir; would also be fractional.

Q. Do you know what is the acreage shown by Warren in the quarter section referred to?

A. The official plat of the Warren survey, approved August 31, 1839, represents the area as 83.87 acres in the fractional northeast quarter.

Q. How much does your survey show in there?

A. The extension survey added 14.13 acres, increased it, which, added to the 83.87 acres, would make exactly ninety-eight acres in the fractional northeast quarter of section twenty-seven as now constituted.

Q. How many acres would the Warren survey show as in the northeast quarter of the southeast quarter and northeast fractional quarter of section twenty-seven, this township and range?

A. The Warren plat shows for the combined area of the northeast quarter of southeast quarter and fractional northeast quarter of section twenty-seven 123.49½ acres. I will qualify my statement and say that the southeast quarter is not returned as a quarter section, returned as 158.58 acres. I took a quarter of that.

Q. So, according to the Warren survey, the man that purchased that acreage, the piece of land I have described, should have gotten what acreage?

A. 123.495 acres.

194 On redirect examination he said:

By Mr. HUNTER:

Q. Mr. Kidder, lot one of section twenty-three and lot two, or at least a portion of lot two, of section twenty-three lies between the land in controversy in this case and the lake?

A. They do.

Q. What is the area of lot one of section twenty-three?

A. 1.13 acres.

Q. What is the area of lot two of section twenty-three?

A. 16.61 acres.

Q. State whether or not the land in section twenty-three lying between lot one of section twenty-seven and the lake is high land?

A. It is high land.

Q. State whether or not any of the area of section twenty-three lying between lot one of section twenty-seven and the lake is as high as 190-foot contour.

A. Yes, sir; 190-foot contour is shown in two different places in lot two of section twenty-three.

LESTER L. CLEMENT, a witness for the plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. HUNTER:

Q. State whether any photographs were taken of the land in controversy in this case under your directions?

A. One known as view No. 9 was taken, showing the Loutz well No. 2, Standard Oil Company, in lot one of section twenty-three.

125 Q. I hand you photograph marked "No. 9," and will ask you to state whether that is the photograph that you refer to?

A. Yes, sir; that is the photograph.

Q. Was that photograph taken on the land in controversy?

A. Yes, sir.

Q. Who took that picture?

A. This picture was taken by Mr. Dambly, a local photographer, under my directions, in my presence.

Q. Is it a correct representation of the scene it portrays?

A. It is. I might add that this picture was taken with the camera near the quarter corner of sections twenty-three and twenty-seven, facing southeast towards the Loutz No. 2 oil well.

(It is admitted by counsel for defendants that Mr. Lester L. Clement, United States surveyor, will corroborate the testimony of Mr. Arthur D. Kidder, supervisor of surveys, who has testified in this case.)

Q. Mr. Clement, I show you supplemental plat of township twenty, marked "Plaintiff A," offered in evidence in this case, and I will ask you what the illustrative profile thereon represents.

A. The illustrative profile on plat marked "A" represents a cross-section of the land from the Warren meander corner of fractional sections twenty-six and twenty-seven, along the Warren traverse line through angle points one, two, three, four, five, six, and seven, representing the relative elevations of the surface of the ground along said line. This profile shows in a detailed manner
126 the fact that the Warren meander line falls generally close to the 173.09-foot contour to angle point No. 5, where it ascends abruptly a hill, thence proceeds over high land, except at a point near angle point No. 6, where it crosses a ravine and ascends on to high land as it goes west.

Dr. HENRY C. COWLES, a witness for the plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. HUNTER:

Q. Dr. Cowles, are you an ecologist?

A. Yes, sir.

Q. Are you a professor of ecology in the University of Chicago?

A. Yes, sir.

Q. Are you the same Dr. Henry C. Cowles who testified in the cases previously tried, namely, United States vs. Jeems Bayou Fishing and Hunting Club, No. 1157; United States vs. C. J. Greene, Jr., et al., No. 1155, and United States vs. W. H. Enders et al., No. 1160?

A. Yes, sir.

Q. I will ask you to state whether or not you made an ecological examination of the tract of land involved in this suit, lot one of section twenty-seven?

A. Yes, sir.

Q. When was your examination made?

A. I first visited the neighborhood in February, 1914, but made no special study. I went there, specially bearing on this suit, in December, 1917, being December 10th, 1917.

Q. Who showed you the line and identified the tract?

A. Mr. Arthur D. Kidder, the supervisor of surveys.

Q. Did you make a thorough examination of the land?
127 A. I did.
Q. What have you to say as to the character of the land involved in this suit?
A. It is upland in character, with the exception of one ravine, and the timber of upland character, being post oak and pine, and on the ravine there is a character of timber of somewhat lower land, water oak, elm, and willow.
Q. Did you make any age study of trees on this land?
A. I did not make any ring counts of stumps on this land, merely made an estimate of the age from the size of the trees to some extent.
Q. What test did you use in making the estimate; what kind of trees?
A. Mostly trees in the ravines in this particular case, some large willow oaks three feet and more in diameter, above the 173.09-foot contour, which I estimated to have been there in 1812.
Q. Are post oak trees growing on the higher elevations?
A. Yes.
Q. You found no stumps to count?
A. I do not recall any now. I know I did not make ring counts. I do not remember seeing any stumps on the land in suit.
Q. Did you make any ring counts on the land adjacent in section twenty-seven?
A. Yes, sir; I made quite a number there.
Q. What do you say as to the character of growth on the two tracts?
A. Quite identical. There is more standing timber on the lots to the west and southwest than the land in question, but the timber is the same in haracter, and this has been somewhat cleared in

128 Q. Well, referring to the post oaks growing on the higher elevation of this tract, what did you find from your examination of those trees in a general way in regard to their age?
A. There were post oaks there long before the Warren survey.
Q. What does post oak trees on a tract of land show?
A. It shows that it is upland in character and not subject to submergence.
Q. Are post oaks characteristic of upland?
A. Yes, sir.
Q. Will they tolerate water?
A. No, sir; not except for a casual overflow.
Q. Will they germinate in water?
A. No.
Q. From your ecologic examination of this tract of land, what have you to say with reference to the area involved in this suit, as to whether or not it was land in place, substantially as it is to-day, in 1812 and 1839?
A. I am satisfied that this land was in place at those dates.

Q. Is there anything in the timber growth or topography of the area involved to indicate the land was formed by the recession of the waters of Ferry Lake since 1812 or 1839?

A. No, sir.

Q. What have you to say in regard to the drainage of the land?

A. It is well drained.

On cross-examination he said:

By Mr. WILKINSON:

Q. Doctor, do you mean to say that post oak is essentially an upland tree?

129 A. Yes, sir.

Q. You mean to say that post oak will not grow, will not germinate or grow in water?

A. If they do, I do not know it?

Q. Have you ever visited in north Louisiana post-oak flats, on which nothing but post oak grow, and which are practically covered with water the entire year?

A. I have never seen any such thing, and I have visited a great many post oak flats, but have never seen any under water any length of time.

Q. You never saw post oaks growing in a flat country which was subject to inundation at least a greater portion of the year?

A. No, sir; only for a few days.

Q. Did you ever see a post-oak flat in which the mahays grow, and it is called a mahaw pond?

A. I usually find mahaws in a condition of land that is subject to more submergence than post oak, and are found in lower ground.

The taking of evidence in this case was continued until May 7th, 1918, at 10 o'clock a. m.

May 7th, 1918, all parties being present, the taking of testimony in the above cause was resumed.

130 LESTER L. CLEMENT, a witness for the plaintiff, being recalled, testified as follows:

On direct examination he said:

By Mr. HUNTER:

Q. Mr. Clement, are you a United States surveyor?

A. Yes, sir.

Q. State whether or not you have examined the property involved in this case in the Loucks case?

A. Yes, sir, I have; lot one of section twenty-seven.

Q. Did you identify the lines of the property so that you could locate the land in dispute?

A. I actually run the lines in the field.

Q. You actually run the lines in the field?

A. Yes, sir.

Q. When was that done, Mr. Clement?

A. The lines that I run in the extension survey was done in 1917; he southern boundary of lot one of section twenty-seven, being a ortion of the Warren trasverse lines, was run by Mr. Kidder in 914.

Q. Are you familiar with the land in dispute?

A. Yes, sir.

Q. Were you present in the courtroom when Mr. Arthur D. Kid-er, supervisor of surveys, testified in this case?

A. Yes, sir.

Q. Do you or not corroborate his testimony as to the facts stated?

A. I can corroborate all of the testimony of Mr. Kidder in the ase.

Q. Referring specially to Warren's traverse line through section wenty-seven, I will ask you to state whether or not that line repre-ents the border of any lake, stream, or watercourse on the ground itself?

31 A. Beginning at the Warren meander corner of fractional sections twenty-six and twenty-seven and retracing the War-en traverse line through section twenty-seven, the first five courses gree very well with the mean high-water elevation of Ferry Lake. he last four courses do not agree with the border of Ferry Lake or ny body of water or water course for contour, nor do they parallel he shore of Ferry Lake.

Q. What have you to say in regard to the correctness of the War-en traverse line, if it was intended to represent the margin of a ake, shore of a lake, or contour of a lake?

A. The first five meander courses from the meander corner of ractional sections twenty-six and twenty-seven, do correctly repre-ent the shore of Ferry Lake. The last four courses from angle oint No. 5 to the meander corner of fractional sections twenty-even and twenty-eight fail absolutely to represent the shore of the ake.

Q. From your knowledge of the ground and your knowledge as surveyor, what have you to say in regard to the correctness or ncorrectness of the Warren traverse line, with the exception of the irst five courses?

A. With the exception of the first five courses, the traverse line, n so far as it should represent the shore of Ferry Lake, is abso-utely incorrect.

Q. State whether or not the error is or is not an apparent error.

A. It is a very apparent error.

Q. From your knowledge of the land, in your opinion as a sur-eyor was the land that is in suit in place in 1812 and 1839 substan-ially in the same condition in which it is today?

A. I think there can be no doubt as to the fact that that land was in place in 1812 and 1839, substantially the same as it is today.

32 In view of the fact that it has been admitted, you will cor-roborate the testimony of Mr. Arthur D. Kidder, supervisor

of surveys, as to the facts testified to by Mr. Kidder, counsel for the Government will not examine this witness further.

(No cross-examination.)

LIONEL L. JANES, a witness for the plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. HUNTER:

Q. Mr. Janes, you are an ecologist?

A. Yes, sir.

Q. Are you the same Lionel L. Janes who testified in the cases tried, namely, the United States vs. Jeems Bayou Fishing and Hunting Club, No. 1157; United States vs. C. J. Greene, jr., et al., 1155; United States vs. W. H. Enders et al., No. 1160?

A. Yes, sir.

Q. State whether or not you made a ecologic examination of the tract of land involved in this suit.

A. Yes, sir; I did.

Q. When was that examination made?

A. In the fall of 1913 and the early spring months of 1914. I have been on the ground subsequently. I was there December 14th, 1917, with Mr. Arthur D. Kidder, supervisor of surveys, of the General Land O'fice.

Q. Are you familiar with the lines of the property or did you have them pointed out to you by Mr. Kidder?

A. Yes, sir.

Q. State the result of your ecological investigation of this tract of land.

133 A. The area is high, dry, and naturally well-drained upland, and is a part of a large peninsula that projects northerly in Ferry Lake. The area is not different from the adjacent surveyed land to the south, nor the recently resurveyed land to the west. The area does not differ material from a great area of high, dry land surveyed in this township, and lands in adjacent township. The land has a good slope, rises from an elevation of 173.09 to about 190 feet. Is covered in various places with a species of forest trees that are peculiar to upland areas, and are found only in upland, such as post oak, upland hickory, and other species of upland trees common to upland areas. Many of these trees are large in size and of great age, as would be naturally expected to be on virgin upland. The indications on the ground is that these forest trees are descendants of other forest trees that formerly occupied the same situation, and my general conclusion was that this area was high, dry upland and had been so for very many ages.

Q. What have you to say with reference to whether or not the area in suit was land in place in 1812 and 1839, and subsequent to those dates and up to the present time?

A. Yes, sir; the land was in place substantially as it is at the present time in 1812 and 1839 and has been in place to the present day.

Q. Is there any indication whatever that the property in suit was formed by the recession of the waters of Ferry Lake or accretions?

A. No, sir; there is no such indication; while, on the other hand, the soil is disintegrating owing to the erosion producing a natural precipitation of the land, so that it is a little lower than it was in 1812, the upper surface having been removed my erosion.

Q. You are satisfied, then, from your knowledge as an ecologist, based upon an examination of the land itself, that that land was in place in 1812 and 1839?

A. Yes, sir.

Q. Are you familiar with the Warren traverse line that fails to include this land in the survey?

A. Yes, sir; I have been over it.

Q. What have you to say with regard to the character of timber growth on the land that was not included in this survey and on the land which was included in the survey?

A. The timber growth is practically the same on both sides of the line; no topographical indications of the shore line of any stream or any body of water anywhere near the so-called meander line.

Q. State whether or not there are any features in the timber growth or the topography of the ground that justified the running of that line if it should be considered as a meander line?

A. No, sir; there is nothing of a topographic character nor anything of an ecologic character whatever to justify the running of a meander line the way it was run there.

Q. State whether or not the topographic conditions and the timber growth are substantially the same on lot one of section 27, the property in controversy, and lots 2 and 3 of section 27, lying to the west, and lots one and two of section 23, lying to the north, all of which was included in the Warren survey?

A. The timber growth is practically the same where the forest has not been cut away. A good deal of timber has been removed from lot 2 of section 27; there has been some cutting also in lot 2 of section 23, but before the cutting was done the forest on all of it was of an upland character, covered with a species of timber that is peculiar to upland and ground that never flows, is never submerged. The entire area spoken of by counsel for the Government was high, dry upland, practically one body of land—I would say that it was one body of land, the land high, dry, naturally well drained, and in place for many ages.

Q. Did you have an opportunity to make any age studies on this particular tract?

A. No, sir; I did not make any age count on lot one of section 27. I did on the adjacent lots in controversy in section 27, and have submitted the data in my testimony. I have examined a good many stumps south of the area in question in this suit and examined them in 1914, being stumps of post-oak trees not far away,

and I found trees there from twenty to thirty inches in diameter, possibly one hundred and fifty to two hundred and fifty years old.

Q. Now, are there standing trees on this land of that same character?

A. Yes; there are some trees in this area.

Q. In your opinion as an ecologist, do they antedate the age of 1812?

A. Yes, sir; they do.

(No cross-examination.)

136 Prof. FRANK LEVERETT, a witness for the plaintiff, being first duly sworn, testifies as follows:

On direct examination he said:

By Mr. HUNTER:

Q. Professor, you are a geologist, are you not?

A. I am.

Q. Are you the same Prof. Frank Leverett who testified in the cases previously tried, being case No. 1157, United States vs. Jeems Bayou Fishing & Hunting Club; No. 1155, United States vs. C. J. Greene, Jr., et al.; and No. 1160, United States vs. W. H. Enders, et al.?

A. I am.

Q. You have already testified in this case with regard to making a geological examination of Ferry Lake, have you not?

A. Yes, sir.

Q. I will ask you whether you observed in that examination the mean high-water elevation of Ferry Lake as it existed in 1812 and 1839.

A. I did.

Q. State what you found with reference to the mean high-water elevation from the viewpoint of a geologist.

A. I found that the waves of the lake had cut a definite bank, the top of which was determined by the surveyors to be 173.09, and this bank is an existing feature around the border of the lake.

Q. The bank is practically continuous?

A. Yes, sir.

Q. And it agrees with the 173.09-foot contour as established by the Kidder survey?

A. It does.

Q. State whether or not *as* a geologist can ascertain the
137 mean high-water elevation of Ferry Lake as it existed in 1812 and 1839 without reference to the survey and without the assistance of the ecologist.

A. Yes, sir; I determined it on the wave work which produced these banks.

Q. I will ask you whether or not the 173.09-foot contour as established by Mr. Kidder, supervisor of surveys, is the mean high-water elevation of Ferry Lake as it existed in 1812 and 1839?

A. Yes; I regard it as such.
Q. Have you examined the area in controversy in this suit?
A. Yes, sir; I have been over it.
Q. Were the lines of the property pointed out to you by any surveyor; if so, whom?
A. They were pointed out to me by Mr. Lester L. Clement.
Q. Mr. Lester L. Clement, a United States engineer?
A. Yes.
Q. What have you to say in regard to the character of the land involved in this suit?
A. The land is largely farm land and has been in cultivation, or a good share of it, and it slopes toward a draw or slough that extends to a point about thirty rods east of the well. At that point we have the edge of the old lake mean high-water elevation of the lake. The well itself stands at an elevation of nearly seventeen feet above the mean high water and there is that much descent in a distance of about thirty rods.
Q. State whether or not all of the area involved in this suit is above the mean high-water elevation as found by you and as determined by the engineers to be 173.09.
A. Yes, sir; I understand that it is.
Q. What have you to say in regard to the natural drainage of the land?
38 A. It is a well-drained tract of land.
Q. Is there any basin, pond, or marsh within the area involved in this suit?
A. No, sir.
Q. Have you examined the soil on this particular tract?
A. Yes, sir; I gave attention to it. It is of a clay soil formation, formed from the underlying formations.
Q. State whether or not the land in controversy was formed by accretions since 1812 or 1839 or at any time.
A. No, sir; I saw no evidence of any accretions.
Q. In your opinion as a geologist, was it formed by accretions since 1812?
A. No, sir.
Q. State whether or not the land in question was exposed by a recession of the waters of Ferry Lake since 1812.
A. No, sir.
Q. You state that the soil was formed—was that soil formed by breaking up of the underlying rock strata?
A. Yes, sir.
Q. There is no evidence of any formation on account of the deposit of sediment or silt?
A. No, sir.
Q. If the land had been formed by accretions since 1812, would there have been evidence on the ground of that fact?

A. Yes, sir; any land that is formed by accretions has a peculiar feature. It is different from all residuary land, which is composed of underlying formations.

Q. What would be the character of the soil if it had been formed by accretions?

A. It would be less in texture and there would be a deposit found over all of the slopes of the previous soil.

139 Q. Did you find any evidence of such deposit on this land?

A. No, sir; I saw none.

Q. In the event that the soil had been formed by the recession of the water of Ferry Lake, would such action have left evidence on the ground indicating that fact?

A. Yes, sir; it could leave such evidence, and I think it did from the fact that in the soundings made of the bed of Ferry Lake I found such deposits of the soil of the preraft period.

Q. You did make soundings of the bed of Ferry Lake?

A. Yes, sir.

Q. Now, was the soil in the bed of Ferry Lake different from the soil of the land involved in this suit?

A. There is some inches of deposit of the old flood plain and several feet of deposit along the line of the old bayou in the bed of the lake.

Q. Now, the deposits mentioned are all in the lake and not on this land?

A. Yes, sir; they are all below the 173.09 contour.

Q. And this land involved in this suit is above the 173.09-foot contour?

A. Yes, sir.

Q. By examining the soil of the bed of the lake below the mean [illegible] water elevation and examining the soil on the land itself, are you in position to testify that the land in suit was not formed by a recession of the waters of Ferry Lake?

A. Yes, sir; I think that I am.

Q. And you say that it was not so formed?

A. It was not so formed.

(No cross-examination.)

140 By MASTER:

Q. Is there any difference whatever between the character of this land excluded by the so-called meander line of Warren and the land included by Warren in his survey as respects the altitude, the growth on the land, or the general characteristics?

A. No, sir; I think there is no difference whatever.

Counsel for plaintiff offers in evidence the interrogatories propounded to defendants under the order of court, and as authorized by equity rule No. 58, relative to production and value of the oil taken from the land in controversy, and also the answers of the Star Oil Company, through K. W. Brown, to such interrogatories and the answers of the Gulf Refining Company of Louisiana to said interrogatories.

JAMES W. NEAL, a witness for plaintiff, being first duly sworn, testifies as follows:

On direct examination he said:

By Mr. HUNTER:

Q. Are you a special agent of the General Land Office?

A. Yes, sir.

Q. State whether or not you made any investigation in this cause at my request for the purpose of ascertaining the production and value of the oil taken from the land in controversy?

A. I have.

Q. Now, what data was submitted to you and by whom for the purpose of this investigation?

141 A. The itemized statement of production of the wells by the Gulf Refining Company of Louisiana and a statement of the cost of the drilling and the cost of producing the oil.

Q. State whether or not you have the statement that was submitted to you?

A. I have.

(Witness produces statement.)

Q. What does the statement of the Gulf Refining Company of Louisiana referred to by you show with regard to the production and value of the oil from the property in controversy and any royalties that may have been paid from said production?

A. The statement shows that during the months of March and April, 1913, there was run from the well 504.17 barrels, that was sold at the price of ninety-eight cents per barrel, making $494.08; the books of the Gulf Refining Company of Louisiana show that A. C. Loucks received one-eighth, being 63.02, valued at $61.76, and that K. W. Brown, for the Star Oil Company, received seven-eighths of the production, being $441.14, of the value of $432.32. The pipe-line earning of the Gulf Refining Company of Louisiana on 504.17 barrels of oil at 10 cents per barrel was $50.42.

Q. Now, what does that mean?

A. The pipe-line company run the oil from the tanks on the land to their receiving tank and charged 10 cents per barrel for the oil run through their line.

Q. From your investigation of this matter, do you believe that the statement relative to production and value of oil taken from the land in controversy furnished you by the Gulf Refining Company of Louisiana is correct?

A. I do.

142 Q. I will ask you to state whether or not the records of the Gulf Refining Company of Louisiana show that it received the entire production from this well?

A. They do.

Q. Was the oil run into the tanks of the Gulf Refining Company of Louisiana on the land itself, or do you know as to that?

A. My understanding is that the Gulf Refining Company of Louisiana do not own the tanks on the land, but they received the oil from the well on the property from the Star Oil Company, which owns the tank on the property, and that the Gulf Refining Company of Louisiana connects its pipe with the tank on the land which belonged to the Star Oil Company.

Q. Was the oil actually run from the land itself by the Gulf Refining Company of Louisiana through its pipe line?

A. It was.

On cross-examination he said:

By Mr. WILKINSON:

Q. Mr. Neal, the pipe-line earnings of $504.17 is 10 cents per barrel; now, that was for service of the line to the Gulf Refining Company?

A. Yes, sir.

Q. And you have added that to the amount that it received?

A. Yes, sir.

Q. You have added to the amount that they received, making the total that they received as $544.50?

A. Yes, sir.

Q. Then you have added to the value of the oil the services rendered in removing the oil?

143 A. Well, yes, sir; as shown by the books of the company.

Q. Now, in your investigation in this case you investigated the cost of drilling the well and operating the well for March and April, 1913?

A. I did.

Q. Did you find out—what in your opinion was a fair charge for drilling and operating during those months?

A. Well, the cost of drilling the well and operating same during the months of March and April, 1919, was eight thousand four hundred thirty-nine dollars and thirty-seven cents.

Q. In your opinion, from your investigation, was that a fair cost for that service?

A. It was.

Q. You know how deep that well was drilled?

A. I don't know the exact depth, but it is, to the best of my memory—it was about twenty-two hundred feet.

Q. Do you know about what it cost to drill a well per foot in that territory, or what it cost at the time that it was drilled?

A. No, sir; I relied entirely on what the record of the company showed as to the cost.

Q. Then you examined their records and ascertained what was actually paid out?

A. I did.

Q. Now, their records show actual payments of these sums which you have stated?

A. It did.

Q. Now, this statement which you have here from which you have been testifying shows what you were able to ascertain as to production of oil and its value and a description of the oil as well as the cost of drilling and operating those wells?

A. Yes, sir.

144 (Counsel for defendant offers the document referred to in evidence.)

(Filed in evidence and marked "Exhibit No. 1.")

On redirect examination he said:

By Mr. HUNTER:

Q. Mr. Neal, from your investigation, I will ask you to state whether or not the Gulf Refining Company of Louisiana received the entire production from the well in suit.

A. Their records show that they received the entire production.

Q. Purchased from the Star Oil Company?

A. Yes, sir; and the record shows the name of K. W. Brown.

Q. Who drilled the well on the land?

A. The Star Oil Company.

Q. And the Star Oil Company sold the entire production to the Gulf Refining Company of Louisiana?

A. Yes, sir.

(Plaintiff closes.)

Defendant's evidence.

Counsel for defendant moves to strike out all of the testimony which has been admitted to show error or mistake in the survey of A. W. Warren, on the ground and for the reason that there is no allegation in the bill of complaint to justify the receipt of said testimony, and on the further ground and for the reason that this is not a suit for the rectifying of the meander line to Ferry

145 Lake and for the further reason that the defendants are third persons holding under the original patent from the United States the property in question and cannot be affected by any error or mistake made in the original survey thereof.

The objection is overruled.

To which ruling counsel for defendant excepts and asks that this note stand in lieu of formal bill of exception.

Counsel for defendant offers in evidence certified copy of the patent to the land in controversy to Matthew J. Jackson, dated June 1, 1860.

Filed in evidence and marked "Exhibit No. 2."

Counsel for defendant offers in evidence deed to the land in controversy from succession of M. J. Jackson to John Ambleton, recorded in Book O, page 752.

Filed in evidence and to be marked "Exhibit No. 3."

Counsel for defendant offers in evidence act of ratification from J. M. Jackson et al. to John Ambleton, recorded in Book P, page 322.

Filed in evidence and to be marked "Exhibit No. 4."

Counsel for defendant offers in evidence deed from Elia Ambleton to Margaret C. Martin, recorded in Book U, page 752.

Filed in evidence and to be marked "Exhibit No. 5."

146 Counsel for defendant offers in evidence deed from Margaret C. Martin to Martin H. Sharp, recorded in Book W, page 279.

Filed in evidence and to be marked "Exhibit No. 6."

Counsel for defendant offers in evidence deed from M. H. Sharp to T. B. Hedrick, recorded in Book Y, page 447.

Filed in evidence and to be marked "Exhibit No. 7."

Counsel for defendant offers in evidence deed from T. B. Hedrick to M. H. Sharp, recorded in Book Z, page 657.

Filed in evidence and to be marked "Exhibit No. 8."

Counsel for defendant offers in evidence deed from M. H. Sharp to J. G. Newberry, recorded in Book 1, page 157.

Filed in evidence and to be marked "Exhibit No. 9."

Counsel for defendant offers in evidence deed from J. G. Newberry to W. H. B. Croom, recorded in Book 11, page 416.

To be filed in evidence and marked "Exhibit No. 10."

Counsel for defendant offers in evidence deed from W. H. B. Croom to A. C. Loucks, as recorded in Book 35, page 733.

To be filed and marked "Exhibit No. 11."

147 Counsel for defendant offers in evidence deed from A. C. Loucks to K. W. and C. W. Brown, as recorded in Book 103, page 1.

To be filed and marked "Exhibit No. 12."

all being recorded in the conveyance records of Caddo Parish, Louisiana, including the patent heretofore offered which is recorded in book 66, page 155, of the conveyance records of Caddo Parish, with leave to substitute certified copies of each of the documents referred to.

Mr. K. W. Brown, a witness for the defendant, being first duly sworn, testifies as follows:

On direct examination he said:

By Mr. Wilkinson:

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. You are a partner or were a member of the partnership known as the Star Oil Company?

A. Yes, sir.

Q. Now, you all operated the land in dispute and drilled on it for oil?

A. We did.

Q. Now, you operated on this land at first—under a lease or as owners?

A. Under a lease.

Q. Under a lease?
A. Yes, sir.
Q. A lease from whom?
A. A lease from A. C. Loucks to S. P. Smith and others.

148 Counsel for defendant offers in evidence lease from A. C. Loucks to S. P. Smith as recorded in conveyance book No. 72, page 414, and the transfer to K. W. Brown, as recorded in conveyance book No. 72, page 442, and the transfer from K. W. Brown to the Star Oil Company as recorded in book 89, page 337.

(Filed in evidence and marked Exhibits Nos. 13, 14, and 15.)

Q. Mr. Brown, you have answered as to the quantity of oil that you obtained from the well in dispute?
A. Yes, sir.
Q. Now, you are the one that answered the interrogatories?
A. Yes, sir.
Q. That is correct?
A. Yes, sir.
Q. Now, how much was the cost of producing that well, Mr. Brown; did you make out a statement of the amount of the cost of production?
A. I didn't make out a separate statement; the statement covers the cost of drilling, equipping the well, and producing the oil.
Q. The statement that Mr. Neal has made is a correct one, is it not?
A. Yes, sir.
Q. Now, that is the cost of drilling, equipping, and operating the well?
A. Yes, sir.
Q. And it actual cost you that amount?
A. Yes, sir.
Q. You paid the bills yourself?
A. Yes, sir.

149 Q. Mr. Brown, your lease covered more land than that fractional northeast quarter of section 27, and you drilled other wells in that vicinity on that Louck lease?
A. Yes, sir; land covered by the same lease.
Q. Now, this northeast quarter of section 27 was included in your lease along with other land?
A. Yes, sir.
Q. And you drilled on the land in controversy how many wells?
A. Only one well.
Q. You have transferred, I believe, the lease on the Louck lands to the Caddo Oil Refining Company, Inc., of Louisiana?
A. Yes, sir.
Q. You operated this well how long?
A. Twenty-three months.
Q. Now, after you transferred your lease to the Caddo Oil Refining Company, Inc., of Louisiana, what became of the pipe in the well?
A. The well was abandoned and the pipe was pulled.

Q. You never operated after the first two or three months?
A. No.
Q. Why not?
A. Didn't pay—it didn't pay.
Q. Didn't pay?
A. No, sir.
Q. The production from the well was not sufficient under the circumstances to operate it?
A. No, sir; the well being alone and the price of oil was low.
Q. Now, the well was somewhat removed from any other well that you had?
A. Yes, sir.

150 On cross-examination he said:

By Mr. HUNTER:

Q. Has the pipe been taken out of this well, Mr. Brown?
A. I have been informed by the company that is now operating it that they have pulled the pipe. I have not been to the well.
Q. To whom was the well leased by the Star Oil Company?
A. The lease was transferred to the Caddo Oil Refining Company, Inc., of Louisiana.
Q. Did the Star Oil Company receive any salvage in taking the pipe out of the wells?
A. No, sir.
Q. When was this well drilled?
A. It was commenced on November 12th—I think the 14th of the month—and completed the last day of January.
Q. It was drilled by the Star Oil Company?
A. Yes, sir.
Q. Now, this partnership that you speak of was composed of yourself, C. W. Brown, and R. L. Stringfellow?
A. Yes, sir.
Q. Was not all of the production from this well known as Louck No. 2 sold to the Gulf Refining Company of Louisiana?
A. It was.
Q. How was delivery made to the Gulf Refining Company of Louisiana?
A. Well, we provided two tanks at the well and pumped the oil into the tanks and it was connected from there to their pipes, and they ran the oil through their pipe line.

151 Q. The tanks were located on the land involved in this suit?

A. I am not quite sure; they may have been a little further; they may not have been on that land.
Q. But the Gulf Refining Company of Louisiana ran its pipe line to the tanks and took the oil therefrom?
A. Yes, sir.
Q. You did not ship the oil away in tank cars or make delivery in any other manner than stated?
A. No, sir.

Q. Now, your company sold the entire production of the well to the Gulf Refining Company of Louisiana?

A. Yes, sir.

On redirect examination he said:

By Mr. WILKINSON:

Q. Mr. Brown, these tanks that you spoke of, you used them in running the oil from this well and also from other wells?

A. No, sir.

Q. You used them exclusively for this well?

A. Yes, sir.

Q. Mr. Brown, since you have examined the map, the tanks into which the oil was removed from this well was on the land in dispute?

A. Yes, sir.

(Evidence closed.)

I hereby certify that the above and foregoing is a correct translation of my stenographic notes taken on the trial of this cause.

152 No. 1165.

DEFENDANT'S EXHIBIT No. 1.

Gulf Refining Company of Louisiana.

Statement of pipe-line runs to the pipe line of the Gulf Refining Company of Louisiana from Loucks well No. 2, operated by K. W. Brown.

1913.

	Barrels.	Price.	Amount.
March	321.88	.98c.	315.44
April	182.29	.98c.	178.64
	504.17		494.08

Total pipe-line runs divided as follows:

	Barrels.	Value.
A. C. Loucks, ⅛	63.02	61.76
K. W. Brown, ⅞	441.15	432.32
	504.17	$494.08
Pipage earnings on 504.17 bbls. at 10c. per bbl		50.42
Total		$554.50

Counterclaim:

Cost of drilling well and operating same, March and April, 1913 $8,439.37

R.

5 Apr. 17–1918–5.

R. B. COOK, *Stenographer.*

153 No. 1165—DEPT. EX. 2.

650817
B
R

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, Oct. 12, 1916.

I hereby certify that the annexed copy of patent is a true and literal exemplification from the record which is in my custody in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

L. H. LAMAR,
Recorder of the General Land Office.

462 The United States of America. E.

Graduation A. F.
Certificate No. 14454.

To all to whom these presents shall come, Greeting:

Whereas, Matthew G. Jackson, of Caddo Parish, Louisiana, has deposited in the General Land Office of the United States, a Certificate of the Register of the Land Office at Natchitoches, whereby it appears that full payment has been made by the said Matthew G. Jackson, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further pro-
154 vision for the sale of the Public Lands," for the northeast quarter of the southeast quarter, and the northeast fractional quarter of section twenty-seven, in township twenty, of range sixteen, in the district of lands subject to sale at Natchitoches, Louisiana, containing one hundred and twenty-three acres and forty-nine hundredths of an acre, according to the official plat of the survey of the said lands returned to the general land office by the surveyor general, which said tracts have been purchased by the said Matthew G. Jackson.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Matthew G. Jackson and to his heirs, the said tracts above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging unto the said Matthew G. Jackson and to his heirs and assigns forever.

In testimony whereof, I, James Buchanan, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the first day of

June, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States the eighty-fourth.

By the President: JAMES BUCHANAN.

By J. A. B. LEONARD, *Secretary.*

(SEAL.) J. N. GRANGER,
Recorder of the General Land Office.

610817.

155 No. 1165. Deft. 2. R. B. Cook, stenographer. Filed Jan. 21, 1919.

No. 1165—U. S. vs. A. C. Loucks et al.

(Item No. 6 of præcipe.)

DEFENDANT'S EXHIBIT No. 3.

Being deed from the succession of M. J. Jackson to John Ambleton, dated April 25, 1864, conveying to said John Ambleton the east half (E. ½) of southwest quarter (SW. ¼) and northwest quarter (NW. ¼) of southeast quarter (SE. ¼) of section twenty-seven (27), township twenty (20), range sixteen (16), containing 118.87 acres; and south half (S. ½) of southeast quarter (SE. ¼) of section twenty-seven (27), township twenty (20), range sixteen (16), containing 79 acres: also northeast quarter (NE. ¼) southeast quarter (SE. ¼), and northeast fractional of section twenty-seven (27), township twenty (20) of range sixteen (16), containing 123.49 acres, situated in the Parish of Caddo, State of Louisiana.

DEFENDANT'S EXHIBIT No. 4.

Being ratification and confirmation by J. M. Jackson, E. J. A. Jackson, M. M. Jackson, W. M. Dickerson, and J. J. Dickerson of sale made by the succession of M. G. Jackson of the above-described lands to John Ambleton in 1864, the said ratification of sale being filed and recorded in conveyance records of Caddo Parish, Louisiana, on August 13, 1866.

156 DEFENDANT'S EXHIBIT No. 5.

Being deed from Eliza A. Ambleton to Margarett C. Martin, of date May 26, 1874, conveying to vendee all of vendor's right, title, and claim to her undivided interest in and to the property belonging to the late John Ambleton, the said deed being recorded in conveyance book U, page 752, of records of Caddo Parish, Louisiana.

DEFENDANT'S EXHIBIT No. 6.

Being deed from Margarett C. Martin to Martin H. Sharp, dated November 6, 1876, conveying to said vendee E. ½ SW. ¼ and NW. ¼ of SE. ¼ of section 27, containing 118.87 acres; also S. ½ of SE. ¼, sec. 27, containing 79 acres; also NE. ¼ of SE. ¼ and NE. fractional

quarter section 27, containing 123.49 acres; also fractional section 2
containing 60 acres more or less; also south fractional section 2
containing 71 acres; all in township 20, range 16, Caddo Parish
Louisiana.

DEFENDANT'S EXHIBIT No. 7.

Being deed from M. H. Sharp to T. B. Hedrick, dated Octobe
18, 1880, conveying to said vendee the same lands as described i
defendant's Exhibit No. 6 above.

DEFENDANT'S EXHIBIT No. 8.

Being deed from T. B. Hedrick to M. H. Sharp, dated Februar
6, 1882, conveying fractional section 26, T. 20, R. 16, contain-
157 ing 60 acres; also E. ½ of SW. ¼ and NW. ¼ of SE. ¼ section
27, T. 20, R. 16, containing 118.87 acres; also S. ½ of SE. ¼
section 27, T. 20, R. 16; also NE. ¼ SE. ¼ and NE. fractional section
27, T. 20, R. 16, containing 123.42 acres; also all the land M. H.
Sharp leased to T. B. Hedrick in Caddo Parish, La.

DEFENDANT'S EXHIBIT No. 9.

Being deed from M. H. Sharp to J. G. Newberry, dated September
9, 1822, conveying E. ½ of SW. ¼, and NW. ¼ of SE. ¼, and S. ½ of
SE. ¼, and NE. ¼ of SE. ¼, and NE. fractional quarter of section 27,
and fractional section 26 and the S. fractional section 28, all in town-
ship 20, range 16, of the Parish of Caddo.

DEFENDANT'S EXHIBIT No. 10.

Being deed from J. G. Newberry to W. H. B. Croom, dated Janu-
ary 13, 1892, conveying E. ½ of the SW. ¼, and NW. ¼ of the SE. ¼,
and S. ½ of SE. ¼, and NE. ¼ of SE. ¼, and NE. fractional quarter
of section 27, and fractional section 26 and the south fractional
section 28, all in township 20 north, range 16 west, Caddo Parish,
Louisiana.

DEFENDANT'S EXHIBIT No. 11.

Being deed from W. H. B. Croom to A. C. Loucks, dated March
30, 1904, conveying a tract of land in section 26 and 25, township 20,
range 16 west, containing three acres, more or less, described as fol-
lows: Commencing on Fairy Lake at the line dividing sections
25 and 26, run thence up the lake 210 feet, thence back south
158 between parallel lines about lane as at present established;
also the E. ½ of SW. ¼, and NW. ¼ of SE. ¼, and S. ½ of
SE. ¼, and NE. ¼ of SE. ¼, and NE. fractional section 27, and frac-
tional section 26 and south fractional section 28, all in township 20

north, range 16 west, Caddo Parish, Louisiana, being the same lands purchased by this vendor from J. B. Newberry, conveyance book 11, page 416.

DEFENDANT'S EXHIBIT No. 12.

Being deed from A. C. Loucks to C. W. Brown et al., dated January 2, 1915, conveying the same lands as described in defendants' Exhibit No. 11 above.

DEFENDANT'S EXHIBIT No. 13.

Being oil and gas lease by A. C. Loucks to S. P. Smith, dated March 2, 1912, to the E. ½ of SW. ¼, and NW. ¼ of SE. ¼, and S. ½ of SE. ¼, and NE. ¼ of SE. ¼, and NE. fractional quarter of section 27; fractional section 26 and south fractional section 28, all in township 20 north, range 16 west, Caddo Parish, Louisiana, containing 490 acres more or less.

DEFENDANT'S EXHIBIT No. 14.

Being assignment of lease by K. W. Brown to the Star Oil Company, dated September 17, 1913, of all the lands described in defendant's Exhibit No. 13, above.

159 United States District Court Western District of Louisiana.

Clerk's Office.

I, W. B. Lee, clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the foregoing one hundred and twenty-five pages contain a full, true, and correct transcript of the record and proceedings had and evidence adduced on the trial in the cause entitled United States of America vs. A. C. Loucks et als., No. 1165, on the equity docket of said court as the originals of same appear on file and of record in this office, excepting plaintiff's Exhibits A and B and photograph No. 9, items 1, 2, and 3 of praecipe, which are sent up to the U. S. Circuit Court of Appeals in the originals in accordance with agreement of counsel—this transcript having been prepared in accordance with praecipe and stipulation of counsel filed in said cause, a copy of which accompanies this transcript.

Witness my hand and seal of office at the city of Shreveport, Louisiana, on this the 30th day of March, A. D. 1920.

[SEAL.] W. B. LEE,
Clerk U. S. District Court for the Western District of Louisiana.

(Citations omitted from the printed record, being filed in the original.)

160 That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and submission.

Extracts from the Minutes of February 24th, 1921.

A. C. LOUCKS, ET ALS.
versus
THE UNITED STATES OF AMERICA, ETC. } No. 3525.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., special assistant to the Attorney General, for appellee and cross appellant, and S. L. Herold, Esq., for appellants and cross appellees, was submitted to the court.

161 *Opinion of the Court—Field July 8th, 1921.*

In the United States Circuit Court of Appeals, Fifth Circuit.

CHARLES J. GREENE, JR., LOUISIANA OIL REFINING COMPANY, and Louisiana Oil Refining Corporation, appellants and cross appellees,
versus
THE UNITED STATES OF AMERICA, APPELLEE and cross appellant. } No. 3523.

A. C. LOUCKS, STAR OIL COMPANY, AND GULF Refining Company, appellants and cross appellees,
versus
THE UNITED STATES OF AMERICA, APPELLEE and cross appellant. } No. 3525.

Appeals and cross appeals from the District Court of the United States for the Western District of Louisiana.

F. M. Cook, S. M. Cook, N. C. Blanchard, H. C. Walker, jr., and Elias Goldstein, for appellants and cross appellees in No. 3523.

J. D. Wilkinson, S. L. Herold, J. A. Thigpen, D. Edward Green, and R. L. Batts, for appellants and cross appellees in No. 3525.

Robert A. Hunter, special assistant to the Attorney General for the United States.

Before WALKER, BRYAN, and KING, Circuit Judges.

KING, Circuit Judge:

On July 19th, 1917, the United States filed in the United States District Court for the Western District of Louisiana, a bill in equity against Charles J. Greene, jr., and others, seeking a decree setting

up its title, and granting relief in regard to certain lands
162 described as lots 2 and 3 of section 27, township 20 north,
range 16 west, Louisiana meridian, containing 65.77 acres, according to a plat of survey approved March 28th, 1917, by Clay Tallman, Commissioner of the General Land Office of the United States.

On August 2nd, 1917, the United States filed a similar bill in said court against A. C. Loucks and others seeking a like decree as to the land described therein as lot number 4 of said section 27 according to the same plat of survey.

Each bill prayed a decree declaring the lands to be mineral in character, and to be the property of the United States; declaring all adverse claims or titles of the defendants to be null and void; cancelling the same as a cloud on complainant's title, and enjoining the defendants from creating any cloud on complainant's title to the lands, or any oil, gas, or mineral therein, or from extracting the same therefrom. It prayed for the appointment of a receiver to take charge of said lands pendente lite and for an accounting for the value of the oil and gas theretofore extracted therefrom by the defendants.

The defendants in each case denied the title of the United States and asserted that the land was held by them by mesne conveyances under patents theretofore granted by the United States conveying the same.

Greene and his codefendants asserted title under a patent including the fractional NW. ¼ of said section 27.

Loucks and his codefendants asserted title under a patent including the fractional NE. ¼ of said section 27. Each answer averred that at the dates of said patents said fractional NE. ¼ and NW. ¼ of said section 27 were conveyed according to the plat of survey then
on file in said land office, and bordered on and adjoined Ferry
163 Lake, and there was no land indicated as between the meander line and the waters of said lake (which is a navigable body of water). That said patents embraced and conveyed the lands now claimed by the United States.

The entire township 20 was orginally surveyed by one Warren in 1839. His plat of township 20 showed Ferry Lake as the northerly boundary of fractional lot 27. No land is indicated on said plat as lying between the meander line of said lake and the waters thereof. In 1908 the presence of oil in adjacent territory caused the President to withdraw all lands of the United States in this and other townships from any manner of appropriation, and a resurvey of this township was directed where it bordered on Ferry Lake and its arms. This survey determined that the mean high-water level of Ferry Lake at the time of said Warren survey in 1839 as well as in 1812, when Louisiana became a State, was 173.09 feet above the Gulf level. That Warren so recognized it and that his section lines terminated at the lake at this elevation, but that in meandering the shore of said lake in front of said section 27 Warren's courses and

distances do not follow the shore of the lake, but run over high ground which at its farthest point is about 1,200 feet from the true shore line. The omitted land is intersected with several ravines running to Ferry Lake. It contains 97.64 acres, divided in lots 2, 3 and 4 of section 27 and fractional section 23, as per said plat of survey of March 28th, 1917. The lots 2 and 3 contain 65.77 acres; No. 4 contains 14.13 acres, and section 23, 17.44 acres.

164 The acreage of section 27 as surveyed by Warren in 1839 was 468.87 acres. The acreage claimed by the defendants in case No. 3523 to be included in the Warren survey and the patent thereunder under which they claim is that in lots 2 and 3 and about ½ of the 16.61 acres described as the fractional section 23 in the Kidder survey, or 74.08 acres. That claimed by the defendants in No. 3525 is lot No. 4 of section 27 and the rest of said fractional section 23, or 23.56 acres. While these suits involve no part of the land described as section 23, the title to the acreage is necessarily disposed of by the decision of these cases.

The cases were referred to a master, who took testimony and made a report finding that the land in controversy had been omitted from the Warren survey, by manifest error, and that the Government was the owner thereof. He also found that the Government was entitled to recover the value of the oil received therefrom less all costs of extracting the same. The defendants excepted to the report, and the Government to so much thereof as allowed to defendants the cost of raising said oil.

The court overruled all exceptions and rendered a decree in favor of the Government in accord with the master's report.

The defendants appealed, assigning error in the finding that the Government was the owner of the land, and the Government has taken a cross appeal from the finding that defendants were to be credited with the cost of raising said oil.

165 There was no dispute as to the facts. The only evidence on which the master predicated his finding that the patents including the northwest and northeast fractional quarters of said section 27 did not cover the land sued for by the Government was that the resurvey of township 20 by Kidder and a reproduction of the meander line of the Warren survey, according to the calls in Warren's field notes, did not follow the ordinary high-water elevation of 173.09 feet above Gulf level, but ran over high ground at distances varying from a few feet to about ¼ of a mile from said 173.09 feet contour. Warren's plat does not show any meander line, but gives the waters of Ferry Lake as the boundary of the fractional sections bordering thereon. The section lines of these sections are conceded to reach the ordinary high-water level as determined by Kidder and the scientific experts to have existed at the time of Warren's survey.

Kidder's survey was made for the purpose of marking the ordinary high-water level of Ferry Lake in 1839 at the time of Warren's survey. This elevation was determined by careful examination and by ecological and geological experts, and a meander line carefully

run at 173.09 feet above gulf level, that having been fixed as the ordinary high-water level existing in 1839.

The plat of this survey also traces the meander line as given by the calls of Warren's field notes.

Both meander lines, thus marked, beginning on the west side of section 27, were generally in a northeast direction to the most northerly point of the land on the south shore of Ferry Lake as
166 marked on the Kidder and Warren plats respectively, and then run in a southerly and southeasterly direction to section 26 on the east.

The additional land shown on Kidder's plat is a strip bounded on the north by a broken line, forming roughly an arc with the courses of Warren's meander line as its chord. Its greatest width is about one quarter of a mile; its length is about one mile.

The evidence shows that the land in controversy was regarded as conveyed by said patents; that parts of it were cultivated and a dwelling house was erected on the part sued for in the Greene case, near the lake. The Warren plat referred to in said patents indicated Ferry Lake as the northern boundary of the land conveyed by each patent.

The only apparent reason for the departure of the traverse line from the shore of the lake is that the land was broken with ravines running down to the lake, that these ravines in time of very high water were partially flooded, and the convenience of the surveyor may have occasioned a failure to follow the water level, the land left out being, at the time, of little value. In other parts of this survey the Warren meander line, as reproduced by Kidder, in places runs into the lake and includes within its calls, as land, small portions of the lake.

There is no suggestion of any purpose on the part of Warren not to include all the land up to the water of the lake in this section as surveyed; and if the land described in the Kidder survey as
166 outside of Warren's traverse line, in section 27 is included, it still leaves section 27 a fractional section.

The evidence of the Government to the effect that the traverse line was a manifest error is only the expression of an opinion, based solely on the fact that it runs from the margin of the lake on high ground in the meander heretofore described. This opinion is based on an absence of explanation given for the discrepancy and not on any evidence of an intention to make the line one of boundary and to depart from the general rule. It is conceded that the survey as a whole (except in the case where a large tract was clearly omitted where Jeems Bayou and Ferry Lake unite) follows generally the contour of the lake and makes the lake the boundary.

It is also not disputed that as to the land sold by the Government in section 27 the survey referred to in the patent represented the lake as its boundary. The question, therefore, is:

Did the evidence in this case show that there was such a mistake in the Warren survey that the Government can now have the same corrected against the present owners of the land conveyed by its patents?

These patents respectively conveyed the land mentioned therein "according to the official plat of survey of said lands returned to the General Land Office by the Surveyor General." (This was the Warren survey.)

This constituted such plat a part of the deed, "and controls, so far as limits are concerned, as if such descriptive features were written out upon the face of the deed or the grant itself." (Cragin v. Powell, 128 U. S. 693; McIver's Lessee v. Walker, 9 Cranch 173, 177; Jeffries v. East Omaha Land Co., 134 U. S. 178, 194-5;
168 Chapman et al. v. St. Francis Levee District, 232 U. S. 186, 197.)

The general rule, well established by decisions of the Supreme Court of the United States, is that where a meander line is run, if lands are described as bordering on a stream or body of water, the meander line is not a boundary but the waters themselves constitute the boundary, the meander line being intended to ascertain the approximate acreage which is to be paid for. (Railroad Co. v. Schurmeir, 7 Wall. 272, 286; Hardin v. Jordan, 140 U. S. 371, 380.)

The patent to the fractional part of section 27 held by defendants in the Greene case called for 147.25 acres. The land claimed by the Government as outside of this acreage is 65.77 acres, and the additional land involved in section 23 is about 8.30 acres, so that the land claimed by defendants is about fifty per cent in excess of the acreage given in said patents. The acreage covered by the patent under which defendants claim in the Loucks case is 123.49½ acres, and the land claimed by the Government as outside of this acreage is 14.13 acres; the additional land involved in section 23 is about 9.44 acres, so that the land claimed by defendants in the Loucks case is not quite one-fifth of the acreage named in the patent.

The case is well within the rule that a meander line is not to be considered as a line of boundary, where the plat of survey shows a body of water as the boundary; but that there must be some absence
of the body of water in the descriptions where shown on the
169 plat, or another body of water which satisfies the natural object shown, although misnamed, or a notation of intervening land, such as a marsh, so that the plat when applied to the ground shows either a clear mistake as to the existence of the natural object or a purpose not to call for it as a boundary.

The case of Mitchell v. Smale (140 U. S. 406, 412) clearly demonstrates the above principle. There a fractional lot calling for 4½ acres was shown on the plat of survey as bounded by a lake. There was a point containing 25 acres outside of the meander lines projecting into the lake. This 25 acres was subsequently surveyed by the Land Department and patented to another purchaser. The second

patent was held invalid and the land decided to have been conveyed by the first patent. The court said:

"We think it a great hardship, and one not to be endured, for the Government officers to make new surveys and grants to the beds of such lakes after selling and granting the lands bordering thereon, or represented so to be. It is nothing more nor less than taking from the first grantee a most valuable, and often the most valuable, part of his grant. Plenty of speculators will always be found, as such property increases in value, to enter it and deprive the proper owner of its enjoyment; and to place such persons in possession under a new survey and grant, and put the original grantee of the adjoining property to his action of ejectment and plenary proof of his own title, is a cause of vexatious litigation which ought not to be created or sanctioned. The pretense for making such surveys, arising from the fact that strips and tongues of land are found to project into the water beyond the meander line run for the purpose of getting its general contour, and of measuring the quantity to be paid for, will always exist, since such irregular projections do always, or in most cases, exist. The difficulty of following the edge or margin of such projections, and all the various sinuosities of the water line, is the very occasion and cause of running the meander line, which by its exclusion of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream. The official plat made from such survey does not show the meander line, but shows the general form of the lake deducted therefrom, and the surrounding fractional lots adjoining and bordering on the same.

The patents when issued refer to this plat for identification of
170 the lots conveyed, and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water, regularly follow."

That acreage is not controlling in limiting the grant is clearly shown by the above case. There are many others of the same purport.

In Johnson v. Johnson (24 L. R. A. (N. S.) (Idaho), 1251), the patent called for a tract of 86.06 acres. The natural object was held to be the boundary and to carry with it 143 acres.

Where the survey mentioned in a patent calling for 80 acres depicted a lake as a boundary, and the meander line did not coincide with the lake shore, the lake was decided to be the boundary and the patent was held to convey 100 acres lying between the meander line and the lake. (Barringer v. Davis, 120 Iowa, 428, 120 N. W. 65.)

See also Lindsey v. Hawes, 2 Black, 554, 560; Brown v. Huger, 21 How. 305; St. Clair v. Livingston, 23 Wall. 46, 63; Grand Rapids & Indiana R. R. Co. v. Butler, 159 U. S. 87; St. Anthony Falls

Water Co. v. Board, etc., 168 U. S. 349; Chapman & Dewey v. St Francis Levee District, 232 U. S. 186, 197.

The decisions holding the meander line to be one of boundary al recognize the general rule to be as above stated and rest on excep tions thereto. In the case of Horne v. Smith (159 U. S. 40) the pla called for the Indian River as a boundary. There was a water
171 course where the plat depicted the river and the mistake wa in calling it Indian River. It was held that this watercours (not a meander line) was the boundary intended and that the patent did not include a large tract of land, never surveyed, which lay be tween the bayou and Indian River.

In Niles v. Cedar Point Club (175 U. S. 300), the survey showed a tract of marsh or swamp lands beyond the meander line; the patent therefore was held to terminate at the meander line and not to carry the swamp lands lying between it and Lake Erie.

In the present cases the plat of survey shows nothing as the meander line, but the shore line of Ferry Lake.

Where a plat called for a lake and there was no lake in front of the so-called meander line, but only one located outside of the side lines of the grant, it was held that the so-called meander line must be taken as the boundary instead of shifting the entire grant. (French Glenn Live Stock Co. v. Springer, 185 U. S. 35.)

Upon the same principle, coupled with evidence of the fraudulent character of the survey, there being no lake or body of water at or near the spot indicated on the plat of survey, rests the decision in Security Land & Exploration Co. v. Burns (193 U. S. 182), and also Lee, Wilson & Co. v. United States (245 U. S. 34).

The decision of the Supreme Court of the United States in Pro ducers Oil Co. v. Hanzen (238 U. S. 325), affirming the de-
172 cision of the Supreme Court of Louisiana in 132 La. 691, lays down the general principle and illustrates the exceptions. There Bristol, a surveyor, made a survey of parts of section 3, 4, 9, and 10 of this township 20 and referred in his field notes to a spur of marsh extending "cut north." It was also admitted that the land in controversy was high land when the Bristol survey was made. This case establishes:

"As a general rule meanders are not to be treated as boundaries and when the United States conveys a tract of land by patent referring to an official survey which shows the same bordering on a navigable river, the purchaser takes title up to the water line.

"Where the facts and circumstances, however, affirmatively disclose an intention to limit the grant to actual traverse lines, these must be treated as definite boundaries; and a patent to a fractional section does not necessarily confer riparian rights because of the presence of meanders.

"Where, as in this case, the survey of improved lands was made at the express request of the occupant to whom they were subsequently patented, and the grant specified the number of acres, and other circumstances also indicated that only the lands conveyed were those

within the traverse lines, the patent of the United States conferred no riparian rights but simply conveyed the specified number of acres."

That the Government has the right to make new surveys and correct errors in former ones does not in any way limit the above general rule or create a different rule where such new survey is made.

The right of the Government to make such new surveys is clear; but where the United States has previously parted with the title, a new survey does not conclude a prior purchaser from asserting whatever title he has acquired by his older patent as against one claiming under the new survey. (Cragin v. Powell, 128 U. S. 696; Hardin v. Jordan, 140 U. S. 371, 400; Mitchell v. Smale, 140 U. S. 406; Hardin v. Shedd, 190 U. S. 508.)

173 This limitation on the effect of a new survey is recognized in the cases asserting the right of the Government to make it. Thus in Kirwan v. Murphy (189 U. S. 35), while the right to order a new survey is upheld, it is expressly stated that the right of the existing grantee could be thereafter asserted.

To the same effect is the decision in Lane, Secretary, *v.* Darligton (249 U. S. 331).

We think that the present cases are governed by the general rule above laid down and that the patents to said section 27 convey all of the land to the waters of Ferry Lake.

The side lines of said section 27 terminate at the lake. The lake lies in the same relative position to said section as the Warren plat of survey indicates. It lies from a few feet to less than a quarter of a mile distant from Warren's meander line as now laid on the ground on the new survey. The omitted land was at the time of little value and broken by ravines. There is no evidence of any intention to grant only to the traverse line, but the apparent purpose was to include all the land to the lake in the survey. That in each of these cases the meander line, according to its calls, is not to be treated as a boundary; but that the patents referring to an official plat which shows the land granted as bordering on the lake the patentee took title to the water line.

The decree in each case is reversed on the appeal therein, with directions that the bill of complaint be dismissed by the District Court. Each cross appeal is dismissed.

(Original filed July 8th, 1921.)

174 *Judgment.*

Extract from the Minutes of July 8th, 1921.

A. C. LOUCKS ET ALS.,
versus
THE UNITED STATES OF AMERICA, ETC. } No. 3525.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged, and decreed by this court that the decree of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court, with directions to dismiss the bill of complaint; and that the cross appeal sued out herein be, and the same is hereby, dismissed.

175 *Clerk's certificate.*

United States of America, United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 160 to 174 next preceding this certificate contain full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said court numbered 3525, wherein A. C. Loucks, Star Oil Company, and Gulf Refining Company of Louisiana are appellants and cross appellees, and the United States of America is appellee and cross appellant, as full, true, and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 159 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the city of New Orleans, Louisiana, in the Fifth Circuit, this 4th day of October, A. D. 1921.

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.
By GEORGE W. ROBERTSON,
Deputy Clerk.

176 In the United States Circuit Court of Appeals for the Fifth Circuit.

A. C. LOUCKS, STAR OIL COMPANY, AND GULF Refining Company, of Louisiana, Appellants and Cross Appellees,
versus
THE UNITED STATES OF AMERICA, APPELLEE and Cross Appellant. | No. 3525.

I, Frank H. Mortimer, clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the transcript of the record of the proceedings of this court in the within entitled case heretofore certified by me for filing in the Supreme

Court of the United States was correct and complete as the same then appeared in this court.

In pursuance of the command of the annexed writ of certiorari, I now hereby certify that on the 2nd day of December, A. D. 1921, there was filed in my office a stipulation in the above entitled case in the following words, to wit:

"In the Supreme Court of the United States,

"October Term, 1921.

"UNITED STATES, PETITIONER,
v.
"A. C. LOUCKS ET AL., RESPONDENTS. } No. 577.

"*Stipulation as to return to writ of certiorari.*

177 "It is hereby stipulated by counsel for the parties to the above entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Fifth Circuit to the writ of certiorari granted therein.

"(Signed) JAMES M. BECK,
Solicitor General.
"(Signed) S. L. HEROLD,
"*Counsel for Respondents.*

"Nov. 23, 1921."

I further certify that the above is a true and correct copy of said stipulation and of the whole thereof.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the city of New Orleans, Louisiana, this 3rd day of December, A. D. 1921.

[SEAL.] FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals, for the Fifth Circuit.

178 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

Being informed that there is now pending before you a suit in which A. C. Loucks, Star Oil Company, and Gulf Refining Company of Louisiana are appellants and cross appellees, and The United States of America is appellee and cross appellant, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal and cross appeal from the District Court of the

United States for the Western District of Louisiana, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United
179 States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable William H. Taft, Chief Justice of the United States, the nineteenth day of November, in the year of our Lord one thousand nine hunded and twenty-one.

[SEAL.] WM. R. STANSBURY,
Clerk of the Supreme Court of the United States.

180 (Indorsed:) File No. 28532. Supreme Court of the United States, No. 577. October Term, 1921. The United States of America vs. A. C. Loucks et al. Writ of Certiorari. Filed 2nd day of December, 1921. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

181 (Indorsed:) No. 3525. United States Circuit Court of Appeals, for the Fifth Circuit. A. C. Loucks et als., Appellants and Cross Appellees, vs. The United States of America, Appellee and Cross Appellant. Writ of Certiorari and Return Thereto. Office of the Clerk, Supreme Court U. S. Received Dec. 23, 1921.

(Indorsed on cover:) File No. 28532. Supreme Court U. S., October term, 1921. Term No. 577. The United States of America, Petitioner, vs. A. C. Loucks et al. Writ of certiorari and return. Filed Dec. 23, 1921.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1922

No. 191

THE UNITED STATES OF AMERICA,
Petitioner,

versus

A. C. LOUCKS, ET AL.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR RESPONDENTS.

S. L. HEROLD,
R. L. BATTS,
J. A. THIGPEN,
E. P. LEE,
J. D. WILKINSON,
Solicitors for Respondents.

Montgomery-Andree Printing Co., Inc., 807 Chartres Street, N. O., La

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1922

No. 191

THE UNITED STATES OF AMERICA,
Petitioner,

versus

A. C. LOUCKS, ET AL.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR RESPONDENTS.

The Government's petition for *certiorari* rested upon the argument that,

> "The case is similar to United States v. Charles J. Green, Jr., et al., No. ———, which is now before this Court on appeal. These two cases were heard together in the Court below. Other cases presenting the same question are now before this Court on appeal. (United States v. Gulf Refining Company of Louisiana, No. 501, now 161; United States v. Gulf

> Refining Company of Louisiana, et al., No. 503, now 163; United States v. C. W. Lane, et al., No. 500, now 160; United States v. Southwestern Gas & Electric Company, et al., No. 502, now 162.) It is desirable that there should be uniformity of decision. Neither the Government nor the defendants ought to be subjected to conflicting decisions, especially since the rights and interests of the defendants and the Government are the same in all."

Respondents made no opposition to the allowance of the writ, and same was granted upon the petition.

It is manifest that, in so far as the Government's contentions now rest upon matters not set up as grounds for review, they cannot be here raised.

ARGUMENT.

The Government urges, however, that "the Court of Appeals was without authority to reverse that part of the decree of the District Court adjudging title to be in the United States, none of the defendants having any exception to that part of the Master's report finding the United States to be the owner of the disputed area."

Defendants did, however, assign as error on their appeal, holding of the District Court sustaining the Government's contention of ownership. Record, 55.

The Government prosecuted and perfected, also, a cross-appeal. Record, 50-52.

No objection was made in the Circuit Court of Appeals that such exception had not been taken to the Master's report, and the Circuit Court of Appeals did, on the assignment of errors, proceed to reverse the decree of the District Court, and rejected the claim of the United States. Record, 90.

Laying to one side the answer that the Master's report affirmatively shows (Record, 40) that the defendants urged their claim before him, it is submitted that, having obtained the review of this case by this Court on *certiorari*, petitioner cannot be heard to urge contentions for reversal inconsistent with the theory upon which the writs were granted; that the issues to be presented were identical with those in the other cases mentioned in the Solicitor General's petition.

ON THE MERITS.

The issues are in fact identical with those in the cases referred to in the petition for *certiorari*.

Defendants hold title under patent (Record, 86) "according to the official plat of the survey of the said lands returned to the general land office by the surveyor general" to "the northeast quarter of the southeast quarter and the northeast fractional quarter of section twenty-seven in township twenty of range sixteen." Such tracts are shown on "the official plat of survey" to border upon Ferry Lake, a navigable body of water. By a resurvey the United States has attempted to create a new subdivision, styled "Lot number one of section twenty-seven", between the meander line

and the high water mark, with an area of 14.13 acres. (Record, 60.)

The Circuit Court of Appeals held that there was nothing in the facts or circumstances brought out by oral and documentary evidence to take the case out of the settled rule that meander lines are not lines of boundary, but are shown merely to denote generally the sinuosities of the body of water which in fact constitutes the boundary.

The case is thoroughly treated in the opinion of the Circuit Court of Appeals, and the principles applicable are fully discussed in our brief in Nos. 160, 161, 162 and 163, which will be argued with this case.

It is submitted that the judgment of the Circuit Court of Appeals is right, and should be affirmed.

Respectfully submitted,

S. L. HEROLD,
R. L. BATTS,
J. A. THIGPEN,
E. P. LEE,
J. D. WILKINSON,
Solicitors for Respondents.

In the Supreme Court of the United States.

OCTOBER TERM, 1921.

UNITED STATES OF AMERICA, PETITIONER,
v.
A. C. LOUCKS ET AL. } No.—

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

The Solicitor General, on behalf of the United States, prays for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Fifth Circuit in the above-entitled cause.

QUESTION PRESENTED.

The case presents the main question whether certain land bordering upon Ferry Lake in Louisiana, a navigable body of water, was, as matter of law, included in a public-land survey made in 1839 and therefore passed under a United States patent issued in 1860 with reference to the plat of such survey; or whether the land was omitted from said survey and therefore remained public land of the United States.

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THE FACTS.

The United States brought suit to quiet its title to certain lands which had been withdrawn from entry by Executive order of December 15, 1908. It also prayed for an injunction, for discovery, for an accounting of the oil and gas taken, for the appointment of a receiver, and for other relief as set forth in its bill.

Defendants answered asserting title as riparian proprietors under a United States patent issued in 1860.

Decrees were entered in favor of the United States on the issue of title, but against its contention that defendants ought not to be allowed credit for the cost of drilling and operating the oil well through which the oil was extracted.

Defendants appealed to the Circuit Court of Appeals from the decree on the issue of title and the United States took a cross appeal from the allowance of defendants' counterclaim for the cost of drilling and operation.

The Circuit Court of Appeals reversed the decree below, with directions that the Government's bill be dismissed by the District Court, and dismissed the Government's cross appeal.

REASONS FOR ALLOWANCE OF WRIT.

As the matter in controversy does not exceed $1,000, an appeal will not lie from the decree of the Circuit Court of Appeals. The case is similar to *United States* v. *Charles J. Greene, Jr., et al.*, No. —,

which is now before this court on appeal. These two cases were heard together in the court below. Other cases presenting the same question are before this court on appeal. (*United States* v. *Gulf Refining Co. of Louisiana*, No 501; *United States* v. *Gulf Refining Co. et al.*, No. 503; *United States* v. *C. W. Lane et al.*, No. 500; *United States* v. *Southwestern Gas & Electric Co. et al.*, No. 502.) It is desirable and important that there be uniformity of decision. Neither the Government nor the defendants ought to be subjected to conflicting decisions, especially since the rights and interests of the defendants and the Government are the same in all. There seems to be no reason why all the cases can not be argued at the same time.

The writ here prayed for is allowable by virtue of section 240, Judicial Code, where the jurisdictional amount prescribed by section 241 of the code is not in controversy, because the decision of the Circuit Court of Appeals is made final by the combined effect of sections 128 and 241 of the code. (*Spiller* v. *A., T. & S. F. Ry. Co.*, 253 U. S. 117, 121.)

It is respectfully submitted that a writ of certiorari should issue as prayed and that the decree of the Circuit Court of Appeals should be reversed.

JAMES M. BECK,
Solicitor General.

OCTOBER, 1921.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 192.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

CHARLES J. GREENE, JR., LOUISIANA OIL REFINING COMPANY AND LOUISIANA OIL REFINING CORPORATION.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED OCTOBER 10, 1922.

(28,533)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 192.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

CHARLES J. GREENE, JR., LOUISIANA OIL REFINING COMPANY AND LOUISIANA OIL REFINING CORPORATION.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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1 United States of America, United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, Circuit Judges:

CHARLES J. GREENE, JR., LOUISIANA OIL REFINING COMpany, and Louisiana Oil Refining Corporation, appellants and cross appellees,

versus

THE UNITED STATES OF AMERICA, APPELLEE AND CROSS appellant.

Be it remembered that heretofore, to wit, on the 21st day of April, A. D. 1920, a transcript of the record in the above styled cause, pursuant to an appeal and cross appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3523, as follows, to wit:

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA,

Complainant,

versus No. 1155 In Equity.

CHARLES J. GREENE, JR., ET AL,

Defendants.

Appeal taken by Defendants, and Cross Appeal taken by the Complainant to the United States Circuit Court of Appeals, Fifth Circuit, New Orleans, La.

STIPULATION AS TO ORIGINAL EXHIBITS.

Filed in U. S. Circuit Court of Appeals May 25th, 1920.

In the District Court of the United States for the Western District of Louisiana.

United States v. C. W. Lane, et al., No. 1153.
United States v. Charles J. Greene, et al., No. 1155.
United States v. Jeems Bayou Fishing & Hunting Club, et al., No. 1157.
United States v. Gulf Refining Company of Louisiana, No. 1158.

United States v. W. H. Enders, et al., No. 1160.

United States v. Southwestern Gas & Electric Co., et al., No. 1162.

United States v. J. M. Walling, et al., No. 1163.

United States v. Mrs. Jessie M. LaRobadierre, et al., No. 1164.

United States v. A. C. Loucks, et al., No. 1165.

STIPULATION OF COUNSEL.

In the above numbered and entitled suits it is agreed by and between counsel for all parties as follows, to-wit:

That, whereas, there have been sent up to the United States Circuit Court of Appeals certain maps and exhibits in the original for reproduction in each of the several transcripts, namely:

1. Plat of survey made by A. W. Warren, Deputy Surveyor, approved August 31, 1839.

2. Field notes of the Warren survey.

3. Resurvey plat of Township 20 North, Range 16 West, approved by the Commissioner of the General Land Office, July 24, 1916.

4. Supplemental plat of Township 20 North, Range 16 West, approved March 28, 1917, by the Commissioner of the General Land Office.

5. Supplemental Topographic Plat of Township 20 North, Range 16 West, approved March 28, 1917, by the Commissioner of the General Land Office.

6. Illustrative profile, marked Plaintiff's Exhibit F.

Whereas, all of the above suits have been appealed from the United States District Court for the Western District of Louisiana to the United States Circuit Court of Appeals for the Fifth Circuit, and all of said plats and exhibits, with the exception of the illustrative profile above mentioned, were included in the original in the transcript of appeal in the suit entitled United States v. Jeems Bayou Fishing & Hunting Club, et al., No. 1157; and

Whereas, exhibits numbered one to five, inclusive, are applicable to all of said suits, and exhibit No. 6 is applicable to suits Nos. 1153, 1158, 1162, 1163 and 1164; and,

Whereas, the cost of reproducing and incorporating the said exhibits in the several transcripts will be very large; now, therefore:

It is agreed that in lieu of reproducing and including the said exhibits in the respective transcripts, the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit may bind or fasten together, in such manner as he may deem proper the said plats and exhibits and index the same so that ready reference may be had to them in the cases to which they are applicable.

It is further agreed that the said exhibits shall be deemed and considered as a part of the records on appeal in each of the said suits, as far as applicable thereto, to the same extent as if the exhibits mentioned had been reproduced and incorporated in the several transcripts.

It is further agreed that this stipulation shall be printed in each of the transcripts of appeal heretofore filed in the United States Circuit Court of Appeals for the Fifth Circuit in suits No. 1157, 1155, 1160 and 1165.

It is further agreed that a duplicate of this stipulation shall be filed in the United States District Court for the Western District of Louisiana, and shall be copied into the transcript of appeal in suit No. 1153, entitled, United States v. C. W. Lane, et al., the record in which case will, by stipulation, be made a part of the record on appeal in suits Nos. 1158, 1162, 1163 and 1164.

Thus done and signed, in duplicate this 18 day of May, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.

FOSTER, LOONEY &
WILKINSON,
CLEM RATCLIFF,
BLANCHARD, GOLDSTEIN &
WALKER,
HAMPDEN STORY,
WILKINSON, LEWIS &
WILKINSON,
BARNETTE & BLANCHARD,
THIGPEN & HEROLD,
S. M. COOK,
Attorneys for all Defendants.

J. L. PUGH,
Atty. for Standard Oil Co. of La.

1 (BILL OF COMPLAINT).

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,

vs. No. 1155 In Equity.

Charles J. Greene, Jr., Amateur Oil Company, Incorporated, Louisiana Oil Refining Company, Defendants.

To the Honorable Judge of the District Court of the United States for the Western District of Louisiana, sitting within and for the Shreveport Division:

The United States of America, by its solicitor, Robert A. Hunter, Special Assistant to the Attorney General, acting herein under the direction and by the authority of the Attorney General of the United States, brings this bill of complaint against the following defendants:

Charles J. Greene, Jr., a citizen of Louisiana and a resident of the City of Natchitoches, in the Western District of said State;

Amateur Oil Company, Incorporated, a corporation organized under the laws of the State of Louisiana, and domiciled in the City of Shreveport, Western District of said State; and the

Louisiana Oil Refining Company, a corporation organized under the laws of the State of Louisiana, and domiciled in the City of Shreveport, Western District of said State;

and thereupon complains and shows unto your Honor:

I.

That on and before December 15, 1908, the plaintiff was the owner, as a part of its public domain, of a certain tract of land, which was then unsurveyed public land of the United States, but which has since been surveyed under the directions and with the approval of the Secretary of the Interior, and is now known and described at Lots Numbered Two (2) and Three (3) of Section Twenty-seven (27), in Township (20), North of Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing sixty-five and seventy-seven hundredths acres, as shown by a plat of survey approved
2 March 28, 1917, by Clay Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana.

That on and prior to the aforesaid date plaintiff was, and still is, the owner and entitled to the possession of the above described land, and likewise of all oil, petroleum, gas and other minerals therein contained.

II.

On December 15, 1908, in order to conserve the public interests, and in aid of such legislation as might thereafter be proposed, recommended and enacted, the President of the United States, by and through the Secretary of the Interior, and under the legal authority vested in him so to do, duly and regularly withdrew from settlement and entry and from all other forms of appropriation, all of the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, which withdrawal included the lands herein involved.

On the 2nd day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, by executive order, and under special authority conferred by the act of June 25, 1910, entitled "An Act to authorize the President of the United States to make withdrawals of Public Lands in certain cases", ratified and confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, above set forth, insofar as it affected the land described herein, including the same as a part of Petroleum Reserve Number Four. That such lands so withdrawn by said order of July 2, 1910, including the land herein involved, were withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been vacated but both are now in full force and effect, and said lands above named, including the property involved herein, ever since the date of the first withdrawal, December 15, 1908, have not been subject to exploration for oil, petroleum, gas or other minerals, or to location or entry of any kind under the general land laws, or mineral laws, of the United States.

3 III.

Plaintiff avers that notwithstanding said orders of withdrawal, and in violation of the rights of the plaintiff, and contrary to its laws, and without any valid title, lawful right or authority, the defendants herein, in bad faith, entered upon and took possession of the tract particularly described in paragraph I hereof, for the purpose of drilling thereon for oil and gas, and did so drill one well known as "Greene No. 5", and did withdraw

therefrom large quantities of oil and gas, the exact amount and value of which is unknown, all to the great and irreparable injury of plaintiff.

IV.

That on and prior to the dates of the withdrawal orders hereinabove set forth, to-wit, December 15, 1908, and July 2, 1910, none of the said defendants, or any one from whom the defendants, or any of them, claim, was in the possession of said land, or a bona fide occupant thereof in diligent prosecution of work thereon leading to a discovery of oil or gas, and no such discovery was in fact made prior to said orders of withdrawal, nor until long after said orders were issued, and had become effective to withdraw said land from location, entry and other appropriation.

V.

That no mineral location was in fact made by any of the defendants herein on the land upon which said well is located, but plaintiff states that the said oil was extracted from the said lands under color of a pretended claim of ownership in and to said lands by the defendants herein.

Plaintiff avers that the said Charles J. Greene, Jr., Amateur Oil Company, Incorporated, and the Louisiana Oil Refining Company, defendants, have no right, title or interest in and to the said tract of land, but acting under said pretended claim of ownership, and subsequent to the withdrawal orders hereinabove referred to, entered upon the said tract of land, drilled a well thereon, as aforesaid, and took therefrom a large quantity of oil and gas, which the said Amateur Oil Company, Incorporated,

has marketed and sold to the said Louisiana Oil Refining Company, defendant herein. That the said Amateur Oil Company, Incorporated, received the price of the oil and gas so produced, marketed and sold by it, and
4 paid a royalty out of the same to defendant, Charles J. Greene, Jr., the amount of which price so received, and of which royalty so paid, is to the plaintiff unknown.

The exact quantity of oil and gas so produced, withdrawn from the land, marketed and sold, the value thereof, and the price and royalties paid to, and received by, the defendants herein, being unknown to the plaintiff, full discovery from the said defendants is sought.

VI.

Except as in this bill stated, the plaintiff has no other knowledge or information concerning the nature of any claims in or to said land asserted by the defendants herein, or any of them, and therefore leaves said defendants to set forth their respective claims or interests. In that behalf plaintiff alleges that the defendants have not, and never had, any right, title or interest in or to, or lien upon, the said land, or any part thereof, or any right, title or interest in or to the petroleum, minerals, oil or gas therein, but, on the contrary, the acts of said defendants who have entered upon said land and drilled for oil and gas thereon and used and appropriated the petroleum and gas deposited therein, and assumed to sell and convey any interest in or to any part of said land, were all in violation of the laws of the United States, and of the aforesaid orders withdrawing and reserving said land, and all of said acts were, and are, in violation of the rights of plaintiff and interfere with its public policy with respect to said land.

VII.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

VIII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of Eight Hundred ($800.00) Dollars, and that all of the defendants herein acted in bad faith in the premises.

IX.

5 In consideration whereof and forasmuch as the plaintiff is without full adequate and complete remedy in the premises save in a Court of equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, en-

try, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That any and all claims asserted by said defendants, or any of them, in or to the said land, and any and all leases, transfers and conveyances thereof, made by defendants, affecting the said land, be declared null and void, and that the same be cancelled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendants or any of them, and that the possession of said land may be restored to the plaintiff.

5. That said defendants, during the progress of this cause, and finally and perpetually, may be enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon the plaintiff's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of boring and extracting, storing and transporting oil or gas, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

6 7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

8. That plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please the Court that writs of subpoena issue directed to Charles J. Greene, Jr., Amateur Oil Company, Incorporated, and the Louisiana Oil Refining Company, defendants, commanding them at a certain time and under a certain penalty therein to be named, to appear before this Honorable Court and then and there full, true and direct answers make to all and singular the premises, and to stand to perform and abide by such order, direction and decree as may be made against them in the premises and as shall be meet and agreeable to equity.

ROBERT A. HUNTER,
Special Assistant to the
Attorney General.

AFFIDAVIT.

United States of America,
Northern District of California.

D. R. Thompson, being first duly sworn, deposes and says:

That he is Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location and all forms of appropriation by order of December 15, 1908, and July 2, 1910; and that from the examination of such lands, and from examination of the records of the General Land Office and of the Local Land Office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing bill of complaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 5th day of July, 1917.

(Seal) LYLE S. MORNS,
Deputy Clerk United States District Court, Northern District of California.

Indorsed:—Bill of Complaint. Filed July 19, 1917.

8 ANSWER OF DEFENDANT, AMATEUR OIL COMPANY, INCORPORATED.

The defendant, Amateur Oil Company, Inc., for its answer to the bill in equity, herein exhibited against it, says:

1.

That it is not fully informed and advised as to the truth of the allegation of article one of the petition, and for that reason, it is denied, and strick proof is required.

2.

The defendant is advised that the allegation in article two is true, and it is admitted.

3.

This defendant denies article three of the petition, in so far as it charges bad faith. It admits that it entered upon said land and drilled a well and exploited for oil, and further that oil was discovered in said well, and that said well drilling together with the equipment thereof, cost this defendant the sum of $8000.00, which it is entitled to have refunded to it, if the well is taken from these defendants.

4.

This defendant admits that it was not in possession of the land in question prior to 1908 and 1910 as alleged in article four of the petition, but neither denies nor admits as to the possession, ownership, right or title or interest as to any other defendant.

5.

This defendant denies article five of the petition, except that it did drill a well thereon and extract small quantities of oil therefrom, an accurate and itemized account and statement of which will be furnished the Court at the trial of this suit, for information of all concerned. Further answering article five, this defendant says it made the locations for this well on this land and drilled same,
9 in perfect good faith, believing that it had a good title thereto, and that it was not trespassing or infringing the rights of any one, or of the Government. Further answering this article, this defendant admits that it sold and market the oil taken from this well, and that defendant, Charles J. Greene, Jr., was paid a royalty, as being and claiming to be the real, true, legal and equitable owner of the fee in said land, and being the lessor of this defendant under warranty, as will appear by reference to said lease recorded in Book 108, page 90 of the record of Conveyances of Caddo Parish, Louisiana, which lease is made part of this answer by reference.

6.

This defendant, denies article six of the petition insofar as it relates to it.

7.

This defendant denies article seven of the petition.

8.

This defendant denies article eight of the petition.

9.

This defendant, answering further says:

That it entered upon said land in good faith, as the bona fide owner, and holder of a lease, warranting this defendant in its use, possession and occupancy and title to the mineral rights in and under said land, and that the defendant, Charles J. Greene, Jr., is liable to it for any sum or amount this defendant may suffer by reason of failure or breach of title or warranty in the premises. That this defendant will furnish this Court with a true statement of the oil produced, saved and marketed by it at the trial, and the price received therefor, and the royalties paid, said statement being now prepared for filing herein.

Wherefore, this defendant, now having fully answered the allegations of this petition insofar as they relate to it, this defendant prays the Court that the defendant, Charles J. Greene, Jr., be called in warranty herein and that he be cited as such to appear and make defense to this action, and that finally, if judgment is entered against this defendant, that it have judgment against the said defendant, Charles J. Greene, Jr., in whatever sum or amount is adjudged against this defendant, together with cost accruing to this defendant herein, and further, this defendant prays that it have judgment for the sum of $8000.00 for the sum and cost price, expended by it in drilling and equipping said well, for the improvements and works placed on said land by it, in the event this Court should hold that judgment should go against this defendant as to title, or right to enter and drill said well and that said well was not its property. That if judgment is rendered herein against this

defendant, for any amount, that in that event said amount be credited to this defendant on the amount due it, and that recourse, judgment and execution be had for this defendant for the residue to which it is entitled for improvements and works placed on said land and premises, and this defendant prays for all orders and decrees necessary to protect its rights in the premises, and for general relief, such as it is entitled to have and receive in equity and good conscience, etc.

AMATEUR OIL CO., INC.,
By H. R. RATCLIFF, Secy.
CLEM V. RATCLIFF,
Attorney for this Defendant.

State of Louisiana,
Parish of Caddo.

Personally appeared the Amateur Oil Company, Inc., by its Secretary, H. R. Ratcliff, who says on oath that from his information and belief the allegations herein and the statements contained herein are true and correct as therein stated.

H. R. RATCLIFF, Secretary.

Sworn to and subscribed before me this 11th day of August, A. D. 1917.

(Seal) D. A. SHARPE, Notary Public.

Indorsed:—Answer of Amateur Oil Co., Inc. Filed Aug. 13, 1917.

11 (PLAINTIFF'S REPLY TO DEFENDANT'S SET OFF AND COUNTER CLAIM).

1.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and renewing and reaffirming the allegations and prayer of the original bill filed herein, for reply to the set off and counter claim included in the answer of the Amateur Oil Co., Inc., denies all the allegations of the defendant's answer, and particularly paragraphs 3 and 9 thereof, relating to the said set off and counterclaim.

2.

Plaintiff further avers that the said defendant is not entitled to any set off or counter claim whatever against plaintiff, because the said defendant entered upon the land described in the bill of complaint herein, drilled a well thereon and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendant was a wilful and knowing trespasser on said land.

3.

Plaintiff further shows, in the alternative, that even if the said defendant is entitled to a set off or counter claim in any amount, which is denied, the sum claimed by the defendant is excessive and should not be allowed.

Wherefore, plaintiff prays that the set off and counter claim asserted by the defendant be denied and disallowed,

and that plaintiff have relief in the premises, as prayed for in the bill of complaint herein.

ROBERT A. HUNTER,
Special Assistant to the
Attorney General.

Filed Aug. 18, 1917. W. B. Lee, Clerk, U. S. Dist. Court, West Dist. of La.

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12 (APPLICATION AND ORDER TO FILE INTERROGATORIES AND INTERROGATORIES).

To the Honorable Rufus E. Foster, United States Judge, in and for the Western District of Louisiana:

And now into this Honorable Court, comes the United States of America, appearing herein through Robert A. Hunter, Special Assistant to the Attorney General, and with respect represents:

I.

That plaintiff files herewith interrogatories in writing for the discovery by the Amateur Oil Company, Inc., and the Louisiana Oil Refining Company, defendants, of facts and documents material to the support of plaintiff's cause.

II.

Plaintiff shows that a note is made at the foot of said interrogatories stating which of the same each of the parties is required to answer.

Wherefore, plaintiff prays for an order allowing the filing of said interrogatories; that service thereof be made upon said defendants, and that they be required to answer the said interrogatories separately, fully and in writing and under oath, within fifteen days after service thereof, all as provided by Rule 58 of the Equity Rules.

Plaintiff prays for all orders necessary in the premises and for general relief.

ROBERT A. HUNTER,
Special Assistant to the
Attorney General.

13 ORDER.

The foregoing application being considered, it is ordered that plaintiff be, and is hereby allowed to file the annexed interrogatories, and that said interrogatories shall be answered within fifteen days after they have been served, and shall be answered separately and fully and the answers shall be in writing, under oath, and signed by the party interrogated.

It is further ordered that the interrogatories addressed to the Amateur Oil Company, Inc., and the Louisiana Oil Refining Company shall be answered by them through their proper officer, or employee, who has knowledge of the facts inquired about.

It is further ordered that service of said interrogatories be made in the manner provided by Rule 58 of the Equity Rules.

Thus done and signed this 18 day of February, 1918.

RUFUS E. FOSTER,
United States Judge.

(1).

State who drilled the well known as Greene No. 5 on the land in controversy in this case.

(2).

State when the said well was commenced, when it was completed, and how long and by whom same was operated.

(3).

Did said well produce oil, and was said oil or the proceeds of the sale thereof converted to the use and benefit of the defendants in this cause?

(4).

During what period was said well operated in the production of oil, and when, if at all, did it cease to produce oil?

(5).

State the total production of oil from the said well (a) up to July 31, 1917, and (b) from July 31,
14 1917, to January 1, 1918.

(6).

State whether or not the said well was operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

(7).

Was a separate and complete record kept by the Amateur Oil Company, Inc., and the Louisiana Oil Refining Company of the oil produced by said well? If so, state how, and in what manner said record was kept.

(8).

If the production as given by you in your answer to the bill of complaint and in your answers to the preceding interrogatories is based upon an estimate of the quantity of oil produced by well in suit, in connection with other wells not in suit, or if you have stated that said production is estimative and not exact, then state (a) the total production of all wells operated in conjunction with the well in suit, naming and giving the location of such other wells, and (b) the manner in which you arrived at, or figured the production of the well in suit.

(9).

State the total market value of the oil produced by the Amateur Oil Company, Inc., and the Louisiana Oil Refining Company from the land in controversy, and say whether or not the value as given by you in your answer is exact or approximate, and furthermore, state upon what the value as given is based.

(10).

Is it not a fact that by deed recorded May 5, 1917, in Book 115, page 411 of the records of the Parish of Caddo, Louisiana, the Amateur Oil Company, Inc., transferred to the Louisiana Refining Corporation, the claims, interests and leases asserted by said Amateur Oil Company, Inc., in and to the land in controversy in this suit?

15 (11).

State what relation, if any, exists, or existed, between the Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation.

(12).

State whether or not the well in controversy in this cause was operated at any time by the Louisiana Oil Refining Company, or the Louisiana Oil Refining Corporation, and if so, say how long said well was operated and how much oil it produced during such period.

(13).

State whether or not the Louisiana Oil Refining Company is engaged, and was engaged at the time said oil was taken from the land in suit, in the manufacture and sale, as well as the production of oil, and also state whether the oil taken by it from the land in controversy was sold to other persons, or corporations, or was manufactured by it into products of oil.

(14).

State to what person or Company the production of the well in suit was sold during the time that same was operated.

(15).

State the quantity and value of the oil extracted from the land in controversy which was sold by the producers thereof to the purchaser or purchasers thereof.

(16).

What was the total price received by the Amateur Oil Company, Inc., for all the oil produced by the well in controversy?

(17).

What was the total price received by the Louisiana Oil Refining Company for all the oil produced by the well in controversy.

(18).

What was the quantity and value of the oil taken away and removed from the property in controversy by the Louisiana Oil Refining Company?

16 (19).

Is it not a fact that an agent, representative, or employee of the Louisiana Oil Refining Company went upon the land in controversy at the time of any pipe line run, or runs, for the purpose of gauging the quantity of oil transferred from the tank, or tanks to the pipe line of said Louisiana Oil Refining Company, and did not said gauger measure, or ascertain, the amount of oil run from said tank, or tanks, to said pipe line? If the amount of oil purchased by the Louisiana Oil Refining Company from the Amateur Oil Company, Inc., out of the production of the land in controversy was not ascertained by a gauger, in the manner above indicated, then state how the quantity of oil so produced was measured or ascertained.

(20).

What are the principal products manufactured from petroleum, or crude oil?

(21).

State the total value, either exactly if you know, or approximately, if you do not know exactly, of the pro-

ducts manufactured by the Louisiana Oil Refining Company from the oil extracted from the land in controversy.

(22).

State the total profits made by you (a) from the sale of any or all of the crude oil extracted from the land in controversy, and (b) the profits made by you from the manufacture and sale of the products of said crude oil.

(23).

How much money was paid by you as royalty to any of the other defendants herein, out of the proceeds of sale of oil taken from the land in controversy, and state the amount of such royalties, which you are now holding, if any, pending the result of this suit, as well as the names of the persons to whom said royalties were paid, or for whose amount they are now being held.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

17 Note: The Amateur Oil Company, Inc., and the Louisiana Oil Refining Company are required to answer, separately, each of the foregoing interrogatories.

Indorsed:—Application and Order to File Interrogatories and Interrogatories to be Answered by The Amateur Oil Company, Inc., and the Louisiana Oil Refining Company. Filed Feb. 20, 1918.

United States District Court, Western District of Louisiana.

Wednesday, Shreveport, La., February 27, A. D. 1918.

Court met pursuant to adjournment and was ordered opened.

Present and presiding: Judge Rufus E. Foster, U. S. Judge.

United States of America,
vs. No. 1155 In Equity.
Charles J. Greene, et al.

This cause came on this day to be heard according to previous assignment, upon the Motions to Dismiss heretofore filed herein by the defendants, Robert A. Hunter, Esq., Special Assistant to the Attorney General, appearing as Solicitor for the Complainant and Mr. Leon R. Smith, appearing as solicitor for the defendants. The said Motion was argued, submitted and overruled by the Court, to which ruling of the Court, the defendants reserved a Bill of exceptions.

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19 THE ANSWER OF CHARLES J. GREENE, JR., TO THE BILL OF COMPLAINT IN THE ABOVE NUMBERED AND ENTITLED CAUSE.

Now comes Charles J. Greene, Jr., and reserving his rights under his motion to dismiss filed in this cause, for answer thereto says:

I.

That he denies that the plaintiff, on the 15th day of December, 1908, was or since was, or now is, the owner, as part of its public domain of that certain tract of land designated in the bill of complaint as Lots Numbers Two (2) and Three (3) of Section Twenty-seven (27) in Township Twenty (20), North, of Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Louisiana, containing sixty-five and seventy-seven hundredths acres, as shown by a plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana, purporting to reflect a survey of lands in Township Twenty (20) North, Range Sixteen (16) West, aforesaid, made under the direction and with the approval of the Secretary of the Interior of the United States, alleged at the time of, and prior to such survey, to be unsurveyed lands of the United States.

Defendant further denies that the plaintiff on, or prior to, the aforesaid date was, or since was, or now is, the owner and entitled to the possession of the aforesaid described land, or of any part thereof, or of any of the oil, petroleum, gas and other minerals therein contained.

Defendant shows that there is not now, nor was there, any such tract or tracts of land known as Lots Number Two (2) and Three (3) of Section Twenty-seven (27), in Township Twenty (20), North of Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing sixty-five and seventy-seven hundredths acres, as set out in the bill of complaint herein, and that the purported survey showing such lots, is illegal, null and void, and the execution and approval thereof, beyond the power,

jurisdiction, control or authority of the General Land Office of the United States, for the reason that the said tracts of land were not, at the date of said survey, in the ownership of the United States, but were in private ownership, as will be hereinafter particularly shown.

II.

Defendant denies that the President of the United States, on December 15, 1908, in order to conserve the public interest, and in aid of legislation as might be proposed, recommended and enacted by and through the Secretary of the Interior, withdraw from settlement and entry, and from all forms of appropriation, all the public lands in Township 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian. Defendant admits that the Secretary of the Interior did by an order dated December 15, 1908, pretend to make such withdrawal.

Defendant denies the said order of withdrawal, if made under legal authority, which is denied, included and embraced, or purported and intended to include and embrace, the lands involved herein, for the reason and inasmuch as aforesaid, said lands at the date of said withdrawal, formed or was, no part of the public domain of the United States, but was, on or prior to, and since said date, and now is, in private ownership, as will be hereinafter shown. Defendant further admits that the President of the United States, by and through the Secretary of the Interior by executive order, and under special authority, conferred by the Act of June 25, 1910, entitled an Act "to authorize the President of the United States to make withdrawal of public land in certain cases," ratified and confirmed and pretended to continue in full force and effect the previous pretended order of withdrawal of December 15, 1908, insofar as it affected

lands as part of "Petroleum Reserve No. 4", but defendant denies that the tracts of land, in controversy herein, were involved or included, or if so included, they were illegally, wrongfully and erroneously, so included, in said purported order of withdrawal,—for the reason that at the date of said order of withdrawal, and since, and prior thereto, the ownership of said tracts of land were not in the United States.

Defendant admits that neither of said Orders of withdrawal have been officially vacated, and that they are still in full force and effect, if they were valid when made, but denies that said orders of withdrawal, in any manner affect the tract or tracts of land, in controversy, inasmuch as said tracts or parcels of land, at the respective dates of said orders of withdrawal, were not included in said orders, or either of them, nor were such tracts or parcels of land in the ownership of the United States.

III.

Defendant denies that it entered upon and took possession of the property herein involved, and described in Article 1 of the bill of complaint, in violation of the rights, or of any right or rights, of the United States, plaintiff herein, or contrary to its laws, and or without any valid title, lawful right or authority, or in bad faith; but avers that he is the legal owner of said tracts or parcels of land. Defendant avers that he executed a mineral lease or contract which by mesne assignments passed to the Amateur Oil Company, Inc., under which the said Company entered upon and took possession of said property for the purpose of drilling and developing the same for oil or gas, and the extraction therefrom of said
22 minerals, and that the said Amateur Oil Company, Inc., did drill one well known as "Greene

No. 5" on the tracts of land referred to in Article 1 of the bill of complaint, and produced therefrom oil, the amount and value of which oil well will be hereinafter more specifically set forth.

IV.

Defendant says that all of the allegations of Article IV of the bill of complaint are irrelevant, immaterial and not pertinent to the issues of this cause, for the reason, and inasmuch as aforesaid, the property, or tracts or parcels of land herein involved, as not nor were they at any of the dates referred to, the property of the United States, and that the Amateur Oil Company, Inc., the sub-lessee of defendant, or either of them, do not claim or assert, title or ownership to or claims or privileges on said property under any discovery of oil, gas or other minerals under the mining laws of the United States, but that defendant as the true and lawful owner of said land, has executed a mineral lease or contract which by mesne assignments passed to the Amateur Oil Company, Inc., and that under said mineral lease or contract the said Amateur Oil Company, Inc., asserts the right and privileges of exploiting and developing said tracts of land herein involved, as forming a component part of the lands described in the mineral lease or contract executed by this defendant which passed by mesne assignments to the Amateur Oil Company, Inc., and that defendant claims and asserts, and for some time past, and since, has ever claimed and asserted title and ownership thereto, under a patent issued by the United States to this defendant of date of ....., as will hereafter be more fully set forth.

V.

Defendant denies that the mineral lease under which oil is or was being extracted from the land herein involved, was under color of a pretended lease, but to the contrary, avers that its sub-lessee, the Amateur Oil Company, Inc., did enter on said property, herein involved, and took possession thereof, in good faith, under
23 and by virtue of a good, legal and valid mineral lease executed by defendant which by mesne assignments passed to the said Amateur Oil Company, Inc., of date of ....., for a valid and sufficient consideration, and for a part, or share, or royalty, of the oil produced and saved from the premises described in said lease, in the manner as is in said lease provided.

VI.

Defendant denies the allegations of the plaintiff, that he nor his lessees had, or have, no right, title or interest in the lands involved herein, but avers that he, defendant, is the true and lawful owner of said land, and that the oil produced and saved therefrom by its sub-lessee, the Amateur Oil Company, Inc., which will be hereinafter shown, inured to the benefit of the Amateur Oil Company, Inc., and of defendant, and was lawfully sold for the account of the Amateur Oil Company, Inc., and defendant under the provisions and conditions of the mineral lease aforesaid in the proportion, and in the manner, as will be hereinafter set forth.

Inasmuch as gas was not produced from said land, defendant makes no statement therefor.

navigable body of water, was and is the boundary line of said Fractional Northwest Quarter of Section 27, Township 20, Range 16, of Caddo Parish, Louisiana, aforesaid, and that the same was not bounded by any meander line; the actual boundary line of said Fractional Northwest Quarter of Section 27, as patented by the United States to defendant, bordering on said navigable body of water, extended and was and is bounded and limited, by the ordinary or mesne high water of said Ferry Lake, at the time of the admission of the State of Louisiana into the Union, leaving no land in the ownership of the United States between said meander line and the ordinary high water line of said lake, or navigable body of water, and that the Department of the Interior was without jurisdiction, power, or authority to cause said tracts of land, in controversy, to be surveyed.

Defendant avers that the original survey, executed by A. W. Warren, Deputy United States Surveyor in 1839, correctly delineated the high lands above the mesne high water mark of Ferry Lake at the date of his survey.

X.

Defendant avers that the United States through its legally constituted authorities, has prior to the bringing of the instant suit, disclaimed any ownership, claim or interest in and to the lands in controversy.

Defendant avers that the Director of the General Land Office of the United States wrote to the Secretary of the Interior in 1908 the following letter:

"November 6, 1908.

"The Honorable,
The Secretary of the Interior,
Sir:

"In connection with my letter of October 24, on the subject of the wanton waste of natural gas in the
26 Caddo oil fields in northwestern Louisiana:

"I have the honor to advise you that a search made by the General Land Office shows that lands remaining in Federal ownership in the neighborhood of this oil field are as follows: * * * * Township 20 North, Range 18 West; NE¼ SE¼ Sec. 1; SW¼ of SW 1/4 Sec. 3 (For S½, SW¼ Sec. 3 see "C" Aug. 24, 1905). * * * *

Very respectfully,

GEO. OTIS SMITH,
Director."

Defendant avers that the United States as above shown has heretofore disclaimed any title to the lands in controversy and that it has only been since the discovery of oil upon the said lands that the United States has laid any claims to the same, and that at this late date after disclaiming ownership to any lands other than certain specific tracts in Township 20, Range 16 West, that it is inequitable for the United States to change its position after private parties had relied upon such disclaimers on the part of the United States, and improved the said lands in the utmost good faith and belief that defendant was the true owner, and that his lessee or sub-lessee would be protected under leases from your defendant, in having made the said land valuable, by expending large sums of money upon the same. That the suit brought by the United States is a very stale demand and not favored in equity.

XI.

Defendant avers that he, as aforesaid, leased the said tracts of land involved herein, which by mesne assignments passed to the Amateur Oil Company, Inc., whereunder there was granted and conveyed to the said lessees the right and privilege of exploiting and developing the same for oil and gas, and other minerals, for the consideration of drilling a well for oil or gas within 30 days from the date of said lease, and right to exploit
27 the same for the purposes as are explicitly conditioned and provided in said mineral lease.

Defendant avers, that under said lease its sub-lessee drilled on the leased premises—that is, on the Fractional Northwest Quarter of Section 27, Township 20, Range 16 West, and on that part of the lands now in controversy—one well. That on the lands in controversy only one well has been drilled, namely, "Greene No. 5", and that it produced 1388.38 barrels of oil of the value of $2607.00, and was thereafter abandoned.

That the proceeds of the oil from "Greene Well No. 5" was distributed as follows: Louisiana Oil Refining Company 709.35 barrels of oil, sold for and at the value of $1282.54, and by the Louisiana Oil Refining Corporation 679.03 barrels at the value of $1324.52 and defendant's Royalty Oil sold for $323.37. Louisiana Oil Refining Company paid defendant $160.32 and the Louisiana Refining Corporation the sum of $163.05.

Defendant in the alternative specially avers that its sub-lessee, the Amateur Oil Company, has expended in the cost and expense paid by it for the drilling and equipping said well, "Greene No. 5", the sum of $8000.00, and that the operating expenses incurred and paid in maintaining said well and handling its production amounts

to the sum of ....., making a total cost and expenditure of .....

XII.

Defendant further avers that he acted in good faith, and in the belief that the title and ownership of said land validly and legally vested in him, and that so believing he has held the possession of said lands for years; that he leased the said lands, in controversy, in good faith, and his sub-lessee by mesne assignments has entered upon the lands and drilled in absolute good faith the well "Atlanta Well No. 5" upon the land in controversy, under a good and valid lease by mesne assignments from defendant; and that, in the event it should be held that the plaintiff is the owner of said tracts of land now in controversy that defendant's sub-lessee, the Amateur Oil Company, Inc., should be, and is, entitled to be
28 reimbursed the entire cost and expenses of drilling and equipping said well "Atlanta Well No. 5", and the expense of operating and maintaining said well, as aforesaid, before your said defendant can be held liable for any oil extracted therefrom.

Wherefore, having made a full and complete answer to all the matters and things contained in the bill of complaint, this defendant prays the said bill be dismissed, and for judgment for its costs in this behalf incurred. In the alternative, in the event this Court should hold that the plaintiff is the owner of the tracts of land, or property in controversy, this defendant prays that its sub-lessee, the Amateur Oil Company, Inc., may be adjudged not liable to plaintiff on account and for the oil taken or extracted from said property, until plaintiff shall have reimbursed defendant's sub-lessee, the Amateur Oil Company, Inc., for the costs and expenses of drilling, equip-

ping and maintaining the said well from which oil was produced and saved, and all incidental charges in handling, preserving, storing, transporting and selling of said oil, and, that in any event, if this relief be refused or denied, that it be adjudged that the costs and expenses of drilling, equipping and operating said well, being in excess of the total value of the oil produced therefrom, that this defendant or its co-defendants, or either of them, are not liable to the plaintiff in and for any amount.

And, finally, defendant further prays for all necessary and proper orders in the premises and for general, special and equitable relief, and for all such as it may in equity and good conscience be entitled to from the facts and the evidence which may be adduced on the trial hereof.

S. M. COOK,
BLANCHARD & SMITH,
Solicitors for Defendant,
Charles J. Greene.

Indorsed:—The Answer of Charles J. Greene, Jr., to the Bill of Complaint. Filed Mar. 18, 1918.

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29 (ANSWER LOUISIANA OIL REFINING CO. TO INTERROGATORIES).

Now into this Honorable Court comes E. R. Ratcliff, who was President of the Louisiana Oil Refining Company, and reserving all of its rights under the pleadings heretofore filed, for answer to the interrogatories propounded to it answers as follows:

Int. No. 1. The Amateur Oil Company.

Int. No. 2. Unable to give this information. Operated by the Louisiana Oil Refining Corporation since May 15, 1917.

Int. No. 3. Yes, save as to the Louisiana Oil Refining Corporation which is not a defendant.

Int. No. 4. Not operated since November, 1917.

Int. No. 5. (a) 835.81 barrels; (b) 552.57 barrels.

Int. No. 6. As an entity.

Int. No. 7. Louisiana Oil Refining Company pipe line, run tickets, and the run tickets of the Louisiana Oil Refining Corporation run tickets.

Int. No. 8. The well was treated as an entity as answered in Interrogatory No. 6.

Int. No. 9. $2607.06 actual value at market price at time oil was run.

Int. No. 10. Yes, but the deed was recorded May 15, 1917.

Int. No. 11. The Louisiana Oil Refining Corporation bought the assets of the Louisiana Oil Refining Company.

Int. No. 12. The well was never operated by the Louisiana Oil Refining Company. Since May 15, 1917, it was operated by the Louisiana Oil Refining Corporation. It produced 679.03 barrels.

Int. No. 13. The Louisiana Oil Refining Company, while in existence, was engaged in selling, refining and the production of oil. The Company bought this oil for manufacturing purposes.

Int. No. 14. The Louisiana Oil Refining Company bought the oil from the Amateur Oil Company. The Louisiana Oil Refining Corporation used the oil for manufacturing purposes.

Int. No. 15. 1388.38 barrels. $2607.06.

Int. No. 16. $1122.22.

Int. No. 17. Oil was not sold by the Louisiana Oil Refining Company in the crude form, but as refined oil, which value at this time it is impossible to estimate.

Int. No. 18. 709.35 barrels by the Louisiana Oil Refining Company $1282.54. 679.03 barrels by the Louisiana Oil Refining Corporation $1324.52.

Int. No. 19. Yes.

Int. No. 20. Gasoline and kerosine.

Int. No. 21. Impossible at this time to tell, as this oil was used with thousands of barrels of other crude oil, and refined together.

Int. No. 22. Impossible to furnish this information. See answer to Int. No. 21.

Int. No. 23. The Louisiana Oil Refining Company paid C. J. Greene, $160.32. The Louisiana Oil Refining Corporation paid C. J. Greene $163.05.

E. R. RATCLIFF.

31 State of Louisiana,
Parish of Caddo.

E. R. Ratcliff, being duly sworn, deposes and says:

I was the president of the Louisiana Oil Refining Company during the time the Company had dealings with the Amateur Oil Company and C. J. Greene.

I have read the foregoing answers and they are true and correct.

Sworn to and subscribed before me on this the 23 day of March, A. D. 1918.

LEON R. SMITH,
Notary Public.

Indorsed:—Answer of Louisiana Oil Refining Company to Interrogatories Propounded to It. Filed Mar. 25, 1918. B.

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32 (ORDER APPOINTING E. H. RANDOLPH SPECIAL MASTER).

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court and economize its time, and for the purpose of expediting the final hearing of said cause, the Court of its own motion appoints Edward H. Randolph, Esq., Special Master herein.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law therein.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may

be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court or elsewhere as may be advisable.

RUFUS E. FOSTER,

Judge.

March 29, 1918.

Indorsed:—Filed Mar. 29, 1918.

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33 (REPORT OF SPECIAL MASTER).

In United States District Court, Western District of Louisiana.

Nos. 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1162, 1163, 1164, 1165, 1167, 1168, 1170, 1171, 1172.

To the Honorable Rufus E. Foster, Judge, U. S. District Court, Western District of Louisiana:

May It Please Your Honor:

Having been appointed by Your Honor Master in Chancery in the above cases to take the evidence and report findings and conclusions of law thereon, and after having heard the testimony and arguments of counsel, I beg to make this my report. In considering the two cases I have found they naturally group themselves into two classes which I have designated as class "A" and class "B."

Class "A" includes the following cases:

United States vs. C. W. Lane, et al, No. 1153.
United States vs. Chas. J. Green, Jr., et al, No. 1155.
United States vs. Jeems Bayou Hunting & Fishing Club, et al, No. 1157.
United States vs. Gulf Refining Company of Louisiana, No. 1158.
United States vs. W. H. Enders, et al, No. 1160.
United States vs. Southwestern Gas & Electric Company, et al, No. 1162.
United States vs. J. M. Walling, et al, No. 1163.
United States vs. Mrs. Jessie M. La Robadierre, et al, No. 1164.
United States vs. A. C. Loucks, et al, No. 1165.

Class "B" includes the following cases:

United States vs. W. W. Green, et al, No. 1154.
United States vs. Henry Hunsicker, et al, No. 1156.
United States vs. Arkansas Natural Gas Co., et al, No. 1159.
United States vs. R. B. Norvell, et al, No. 1167.
United States vs. W. H. Mathews, et al, No. 1168.
United States vs. Dillard P. Eubank, et al, No. 1170.
United States vs. Mrs. Lydia H. McMullen, et al, No. 1171.
United States vs. Sam Mason, et al, No. 1172.

In Class "A" the defendants deny the title of the United States. In Class "B" they admit the title to the lands in dispute are still in the United States, but set up that they in due course according to law made mineral locations thereon of which they cannot be divested.

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First in consideration I take up Class "A" suits of which the case of United States vs. Jeems Bayou Hunt-

ing & Fishing Club, et al, No. 1157, is most typical of the contentions raised by the United States and the defendant in Class "A" suits. Concisely stated in the class "A" suits the contention of the United States is that the ownership of the lands in dispute has never at any time passed from it; that in point of fact they were in the category of unsurveyed public lands until December, 1916, and that since that survey no alienation has been made by the government and that defendants are without any muniment of title.

On the contrary the defendants deny that the lands were in the catigory of unsurveyed lands prior to March 1917 and aver that prior to that date, to-wit: 1839, their lands were surveyed by A. M. Warren, Deputy United States Surveyor, mapped and filed in the Federal Land Office, the land sold and United States Patent issued therefor, and that the defendants have good title derived by mesne conveyances from the original patentees. In the survey of 1839 of Township 20, the government claims that the surveyor left out of the survey 987.77 acres, 248.87 acres of which is involved herein and to which the government claims defendant has no title. The above are the out-standing contentions. There lands are all border lands lying on Ferry Lake and are all in Township 20, Range 16 West Louisiana Meridian, and lie in the following sections of said township, to-wit: three, four, five, eight, nine, ten, twelve, thirteen, fifteen, sixteen, twenty-three, twenty-four, twenty-five, twenty-seven and thirty-two.

In addition to the above general statements of the issues made by defendant there are in the pleadings such issues as denial of the right to make a re-survey of Township 20 on the ground that the order therefor directs the survey from Range 10 to Range 11, which is not inclusive of range 16; also that lands in controversy

were in character swamps and passed to the State; and that the alleged unsurveyed lands in this township lying on the Lake, were formed by relictions and passed to the defendant holders as riparian proprie-
35 tors.

Altho such contentions were set up by defendants pleadings they were as the trial progressed, in a number of the cases, practically abandoned and the controversy settled down on the pivot of whether the lands in controversy, at the time in 1839 when a survey of this township was made by the government were in point of fact included; or if not in point of fact included in the 1839 survey, yet the government should be held, as respects defendants and their authors in title, in law as virtually having thru its own surveyor and his maps held out that all lands in question at that date were included, and therefore should not be permitted at this date to revise its representation thru its surveyor and maps to the prejudice of defendant, even tho the lands in controversy were in place and not included in map. This would reduce the controversy to a question of law. To make this clear I will take up the cases seriatim and first the case No. 1157 of United States vs. Jeems Bayou Hunting & Fishing Club, et al, as being the most illustrative of the contentions.

United States
vs. No. 1157.
Jeems Bayou Hunting and Fishing Club, et al.

This case involves lots 8, 9 and 10 aggregating 85.22 acres of Section 10, Twp. 20, N. R. 16 West and is shown on plat No. 11 of plaintiff's offering, colored red. This plat is called a supplemental plat of Twp. 20 N. Range 16 West made by A. D. Kidder and associates,

United States Surveyor in 1916, and approved Marcy [March] 28, 1917. This same plat illustrates the government contention that the original survey of this township 20 by Warren, Government Surveyor in 1839 (Warren's map being plaintiff's offer 3, filed in evidence) omitted 565.98 acres of land which were in place at the time and omitted by Warren and therefore, as the Government contends, remained legally as unsurveyed Government Land even after Warren made his map (p. 3) and returned it with his field notes to the surveyor general's office. The omitted areas are shown on Plat 11 and appear all around the
36 border of Ferry Lake, but the greatest area omitted by Warren in the original survey lies in Sec. 10. As stated already the original survey and maps of this land by the government was by Warren in 1839 and a replica of this map is in evidence (P. 3). This survey shows the area in the southwest fractional quarter, Sec. 10, as containing 55.88 acres and represents section 9 lying west of section 10 as being no land at all. As a matter of fact subsequent surveys made by Bristol in 1871 and by Kidder in 1916 confirmed the fact that at the time of Warren's survey the part of Sec. 10 represented on his map as rather a long and narrow peninsular and as containing 55.88 acres actually contained 129.60 acres additional and that Warren's map showing section 9, lying west of section 10 as water, actually had at that time 66.29 acres, entirely omitted from Warren's survey and 28.33 acres in Section 16 which Warren's survey and map ignores altogether.

This brings me to the consideration of the fact claimed by the Government, to-wit: Were the lands in section 10 aggregating 129.60 acres, in section 9 aggregating 66.29 and in section 16 aggregating 28.33 acres actually in esse as high lands at the time of Warren's

survey. To determine this matter the United States Government ordered a resurvey in 1913 and 1914 and an extension survey in 1916 and 1917 of the lands in township 20, Range 16 West. This work was done under their instructions by Arthur D. Kidder, supervisor of surveys. The re-survey was made in 1913 and 1914 and the extension survey in 1916 and 1917. In the course of this survey Mr. Kidder and his associates re-established and reproduced the survey made by Warren in Township 20 N. R. 16 West and made the official plats and maps herein filed (all approved by the department of the Government Land Office). On the trial before me, it is specially admitted in suits herein Nos. 1153, 1158, 1162, 1163, and 1164 that these surveys, maps and plats by Kidder were executed according to the instructions of the Government Land Office and that such plats correctly re-established and reproduced the survey made by Warren in Township 20, N. R. 16 West in strict accordance with the original survey.

Altho in this suit there is no admission in the record to the same effect, yet in the arguments, oral and in brief, there is no attack on the accuracy of the
37 map of Kidder. Much interesting testimony was adduced by the Government to prove its contention that the lands in these suits were in actual place as high lands when Warren made his survey but were ignored by Warren in making his survey and treated as non-existant by him and also to prove that in the section to the west and south where Warren's map and field notes represent that the shore of Ferry Lake lay, there was in point of fact high lands with the actual shore line distant 2700 and 2500 feet at furthest and 725 to 990 feet nearest.

This testimony was furnished not only by Kidder and his associates who actually did the work, but also

by three distinguished scientists, one a Geologist, Prof. Frank Leverett of the University of Michigan, and two geologists, Prof. Lionel J. James of the Dept. of Agriculture of the United States and Dr. Henry C. Contes, Professor of Plant Ecology in the University of Chicago.

One of the first things to determine in reproducing the Warren survey and to show the exact status of the land and water at that period and the period of 1812 when Louisiana came into the Union was to determine the mean high water mark of the Ferry Lake at that period or the contour line, as it is called, of the lake.

This was done by a study of the wave action on the border of the lake by the Geologist which consisted of shore marks and also of a study of the soil in the bed of the lake and on the upland borders; also by a study of the tree growth on the shore and the lake and the various timber belts on the shore consisting of cypress; above this, overcup oaks and other trees which would not grow upon lands permanently covered by water. In this recognizance work they directed stakes to be set at the margin between the cypress timber and overcup oaks. It is established by Kidder's testimony that the high water elevation of Ferry Lake in 1839 (the date of Warren's survey) and in 1812 when Louisiana was admitted into the Union, was 173.09 feet above gulf level. Certain birth marks as to the high water elevation of Ferry Lake with reference to the Gulf Level (or sea level) have been established by Army Engineers on Red River and in this township 20 dating back as far as ..... and these were identified and used by Kidder in locating the 173.09 contour of the lake and the contour actually made by the surveyors around the entire border of Ferry Lake. When this contour was made it was found to practically coincide with 173.09 acres high water level already independently located and staked by

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the Geologist and Ecologists. It was also found that Warren's survey was actually made by him with reference to this same level and contour. In returning the lines of Warren's survey following Warren's field notes and directions, Kidder found that in the termination of all the section lines to the lake shore Warren had stopped at the 173.09 level and also that in retracing many of Warren's meander lines on the border of the lake, he (Warren) had run them either exactly or approximately on the 173.09 contour (which had already been located and worked out by Kidder and the scientists as the shore before the above verification by Warren's own date). The 173.09 contour is confirmed by the Louisiana-Texas Boundary Commission in 1841; also by Moore's survey in 1846 and Boyd's survey of 1854, dealing with certain other lands on Ferry Lake.

A more detailed reference to the evidence and discussion thereof on this point might be made, but the fact that Warren recognized the 173.09 elevation as existing at the time of his survey is expressly made in the suits herein, Nos. 1153, 1158, 1162, 1163, and 1164, and is not seriously denied, since all evidence is in, by the other defendant litigants. The admission on this matter finally made in the above suits is as follows:

"2. That the contour line of 173.09 feet above Gulf level established by the said Arthur D. Kidder, Supervisor of Surveys, as the mean high water elevation of Ferry Lake in 1812 when Louisiana was admitted into the Union, and in 1839 when A. W. Warren made his survey of Township 20, North of Range 16 West, was in reality the mean high water elevation of Ferry Lake and James Bayou, at such dates, and that the meander line of Ferry Lake and James Bayou, as run by said Kidder, follows said contour of 173.09 feet.

"3. That all of the tracts in controversy in these suits lie above the mean high water elevation of Ferry Lake as it existed in 1812 and 1839.

39 "4. That the various tracts of land lying between the meander line of Ferry Lake and James Bayou as run by the said Arthur D. Kidder, and the line represented as a meander line upon the plat of said original Warren's survey, hereinabove referred to, including the tracts in controversy in these consolidated causes, were in 1812 and 1839, at all times since said date, and now are, lands in place and of the same character, geological formation, and quality, as the lands surveyed by said Warren, as aforesaid: that said tracts of land are now and were in 1812 and 1839, and at all times since said dates, what is known in this locality as hill land, covered with native forest trees and vegetation characteristic of hill land, and that all of said lands were at the dates mentioned and at all times subsequent thereto uplands in character and existed as such at the time of the said Warren's survey and in 1812.

"5. That the various tracts of land embraced in the extension survey of the said Arthur D. Kidder, Supervisor of Surveys, and represented upon the plats aforesaid, including the property in controversy in these consolidated causes, were not formed by accretion, or by the recession or reliction of the waters of Ferry Lake or James Bayou since 1812." (See stipulation of counsel in cases mentioned, pages 2 and 3.)

On their basis of 173.09, Kidder and his associates were able by taking Warren's field notes, to track him over the exact terrain which he walked in 1839 and found beyond a doubt in this section that when Warren

reached nearly the point of the land shown on his map as a narrow peninsula in the southwest quarter of section 10 in township 20, north range 16 west, he carelessly left the shore line of the lake, running a short distance to the west on a line through highlands well timbered, leaving the lake shore 725 feet south of him and then turning approximately north, ran his line through high lands without reference to the actual shore line of the lake which in point of fact was at that time at least 2770 feet to the west of his survey. By so doing he ignored the presence of the land in question in this suit which at that time was in place and most of it seven feet higher than the land actually surveyed by him and made a map showing 55.88 acres as containing all the land in the alleged southwest fractional quarter of section 10. This is well illustrated by map 31 of plaintiff in evidence. The land so omitted was topographically surveyed, its elevations taken by Kidder and associates and map of it shows it to have been even above the 180 foot contour (which was the high water stage at that period of Red River and Ferry Lake) and none of it below the 173.09 level on which Warren based his survey.

It is also, by the scientists already mentioned, proven that this land so left out by Warren was at the time of his survey well timbered high land with a growth on it of pine, oak and red gum, etc. It is proven by the scientists that this same sort of growth was in this land as far back as 1800. From a comparison of Warren's map, plaintiff 3, in evidence, with Kidder's survey as shown by Map 31 Plaintiff's evidence, page 9, it is apparent that the little peninsula mentioned by Warren as the fractional southwest quarter of section ten does not represent either the area or shape of the land, certainly in place at the time of his survey—nor does it even approximate the real area and shape. It is im-

possible to accept his southern or western line as a real meander of the shore. It will be seen from map 31 of Plaintiff's evidence that the lots involved in this suit are far from the total area omitted by Warren in his survey of the western fractional one-half of section ten. The area of the land is 85.22 acres; the other lands omitted by Warren from his survey in this point approximate 118.46 acres plus a body of land lying north of the above land aggregating 280.87 acres surveyed by Bristol in 1871, all of which Warren's map returns as lake.

I find therefore as a fact that this land in question was and is not alluvial nor swamp nor overflowed nor formed by retection, recession or accretion but it was high lands in place in 1812 and 1839.

I find also as a fact that the land in question was not surveyed by Warren in 1839 and should be classed in the catigory of unsurveyed public lands of the United States prior to the survey made by Kidder unless the defense set up by defendant shows a divestiture of the ownership of the government since the Warren survey.

The defendant, the Producers Oil Company, claim under a lease from the Jeems Bayou Hunting & Fishing Club, in 1910, and put down the oil wells on this land (the Texas Company bought the oil produced
41 therefrom from the Producers Oil Co.) The Producers Oil Company therefore is bound to defend the title of the Jeems Bayou Hunting & Fishing Club. A consideration of the same and the special defenses set up is now in order.

The United States issued to S. D. Pitts on April 2, 1860, a patent "to the Fractional Southwest quarter of Township 20, N. R. 16 West, according to the official field notes and plot of survey in the Government Land Office." The Patent stated the land conveyed was 23 acres. As a matter of fact Warren's map represents

the fractional southwest quarter of section 10, containing 55.88 acres (there is a suggestion that Pitts actually intended to buy the southeast quarter of this section which is shown by Warren's map as containing 23 acres.)

But inasmuch as the title calls for the southwest quarter, this fractional southwest quarter according to Warren's field notes and directions actually contained approximately 48 acres (the volume of the 55.88 acres and about 7 acres as shown by Warren's map in this peninsular being in the northwest quarter of Section 10). Pitts got the patent and paid for 23 acres.

As stated in the outset in this opinion, the lots or land in controversy here were not as a matter of fact embrased within the Warren line but lie entirely out of the 48 acres which Pitts actually took under the Warren survey. The Jeems Bayou Hunting & Fishing Club purchased from Pitts and succeeded to all the rights under his patent, no more and no less.

Certain preliminary defenses in this and the other cases were passed on by your Honor and rejected. The contentions in the pleadings that the land in question was swamp and overflowed land and that it was uncovered by a recession of the water and belonged to Pitts and his succession in title as Reparian owners is not pressed; in fact, the James Bayou Hunting & Fishing Club in a suit No. 17707 on the Docket of the District Court, Caddo Parish vs. Levee Board, denied that the land in controversy was ever swamp or overflowed land and also denies "that the same has been formed either in whole or in part since its survey in
42 the long ago." In other words, an admission that the land in dispute was actually in place as high land when Warren made his survey in 1839.

As above stated, I have already concluded that the land in dispute was in place as high land (equally as

high and most of it higher than the land actually surveyed by Warren) when Warren made his survey and I have also found that Warren did not actually survey this land and that his survey which purports to show a narrow peninsula at no point over 400 feet wide with the lake on its western and northwestern boundary in point of fact was not true, that the lake at the time of his survey was over half a mile away and at its nearest point on the south 725 feet distant; besides there were lands in this section and section 3 subsequently surveyed by Boyd and Bristol, which shows in Warren's map as water, which was actually high land in place, aggregating the whole 370.56 acres. In Warren's survey in this township, a grand total of 987.77 acres of high land in place at the date of his survey is shown to have been omitted from his map. Considering this to be true, defendants argue that the Government should be estopped from denying the verity of Warren's map at any time after third parties have bought, much less at this late day.

This leads to the law question involved. After a review of the authorities my opinion is that the Government is not estopped when it is satisfied that there was manifest error or material variation between the traverse line of the Lake represented on a map and the true border of the Lake; but may order a resurvey and treat the land omitted from the first survey, as public land, which has never been surveyed from the public domain.

The Supreme Court of the United States in 142 U. S., 161, states the law thus: as to the rights of the Government when it believes there is error or fraud in the surveys already made: "The power to make and correct surveys of public lands belongs exclusively to the political department of the Government and the action of that department is unassailable in the Court

except by direct proceedings." D. 189 U. S. 35—Do 168 U. S. 589.

The case in 189 U. S. Kernan vs. Murphy, 43 is directly in point, a survey was made by Howe, the U. S. Surveyor, where the meander line was at a considerable distance from a lake. The lake, in fact, existed, but not at the place represented on the plat. The result of the false meander was the omission of a large body of land between the so-called meander and the lake. The department ordered a new survey (as in the case at bar) and parties claiming the omitted body of land enjoined the execution of the survey, but the Court rejected the injunction holding that the department not only has the power to make correction surveys, but "It must primarily determine what are public lands subject to survey and disposal." In a recent case decided by the Supreme Court of the United States, Lee Wilson & Co. vs. U. S., 245 U. S. 24, it is announced: "If in the making of a survey of public lands, an area is through fraud or mistake meanded as a body of water or lake where no such body of water exists, riparian rights do not accrue to the surrounding lands and the land department, upon discovering the error, has power to deal with the meandered area, to cause it to be surveyed and lawfully to dispose of it. Altho the general rule is that a meander line is not usually one of boundary yet this meander line must have certain requirements stated below, and if it does not have those requirements it is a boundary line.

The case of Producers Oil Co. vs. Hanszen, first decided in the Supreme Court of Louisiana, 132 La. 691, and affirmed in the Supreme Court of the United States in 238 U. S. 325, settles the question as to whether Warren's so called meander line in his survey of the southwest quarter of Sec. 10, Twp. 20, R. 16 (the land herein involved lying in that quarter section and

actually in place in 1812 and 1839, as now) is to be treated as a true meander line, or whether it must be treated as a boundary line limiting the patentee to the actual area within the boundary. Both the Supreme Court of Louisiana and the Supreme Court of the United States decided that a surveyor's traverse fails in all respects as a meander line when it was made without regard to a body of water, and does
44 not approximate its contour, or when substantial areas throughout the twp. lying between the so-called meander line and the body of water which it pretends to deliniate, have been omitted. In either case the traverse is a boundary of the adjoining patented lands and reparian rights do not accrue. Tested by this the so-called meander line established by Warren of this section, as above described, does not meet any of the requirements set forth by the Supreme Court of the United States, because:

(1) It is (at the point under discussion) not "an accurate survey of the meanderings of the watercourse."

(2) It does not show "the place of the watercourse and its sinuosities.

(3) It does not "define the sinuosities of the banks or the water."

(4) It is false, erroneous and misleading in that it does not afford any reliable means "of ascertaining the quantity of the land in the fraction, subject to sale, and which is to be paid for by the purchaser," 7 Wallace 272, R. R. Co. vs. Schumier. In 159 U. S., page 40, Howe vs. Smith, it is held that "It is unnecessary to speculate why it was that the surveyor (Warren in

the case at bar) did not survey the omitted land; it may have been a mere oversight, but whatever the reason, the fact is obvious that no survey was made of that body of land." "Altho it was unsurveyed it does not follow that a patent for the surveyed tract (herein the Pitts patent) adjoining, carries with it the land which, perhaps, ought to have been, but which was not in fact surveyed. The patent conveys only the land which is surveyed, and it is clear from the plat and the survey (i. e., the field notes, etc.) that the tract surveyed terminated at a point other than the real bank of the river as the patent carries no land beyond the terminal fixed by the surveyor."

The land actually purchased and paid for by Pitts (as above stated he actually got more than he paid for) was conveyed and covered by the description of courses and distances set forth in Warren's field notes and referred to in the Pitts patent, and the
45 United States is concluded as to such land. Giving the Patentee all of the land in areas stated in the patent and described and contained in lines and distances in such patent and which is all he paid for, protects him and his succession in title and the government should not be concluded by the fraudulent or gross negligence of its surveyor, 193 U. S. 167, Security Land & Ex. Co. vs. Burns (in that case the real lake or water at the point in question was about half a mile away from the pretended meander.)

Again 232 U. S. 452, Gautier vs. Marian, "If the area in question designated and meandered as a lake, was in truth high land susceptible of cultivation, it was as much public lands after the survey as if its true character had been reported by the surveyor, it was merely left unsurveyed (in that case there was no reference in the field notes or plat to the omitted areas) Do. 175 U. S. 300, 185 U. S. 50. In 232 U. S. 186-7, Chapman

& Dewey L. Co. vs. St. Francis Levee Dist., "these public lands are patented as to the official plat of the surveyor returned to the Government Land Office by surveyors, but the notes, lines, landmarks and other particulars appearing on the plat must be considered in interpreting the patent.

The last expression of the Supreme Court in the above case of Wilson & Company vs. U. S. 245, U. S. 24, definitely settle the substantial point in controversy here. "If in the maps of a survey of public lands, some area is through fraud or mistake meandered as a body of water or lake where no such body of water exists, reparian rights do not accrue to the surrounding lands, and the land department upon discovering the error has the power to deal with the meandered area, to cause it to be surveyed and lawfully to dispose of it."

It is impossible therefore to escape the legal conclusion that lots contended for herein must be held to be public government lands, the property of the United States and that neither Pitts under his patent, nor the Jeems Bayou Hunting & Fishing Club nor its
46 lessee the oil companies have any title thereto. So holding, it remains to consider the claims of the government for the oil and other minerals taken therefrom and the form of judgment that should be rendered against the defendant. The Government contends that it is entitled to recover the value of oil extracted from the lots by the defendants on the theory that they are all wilfull trespassers and that the general rule is that the measure of damages for a tortious conversion is the value of the property converted with interest. My conclusion is that defendants herein are innocent of any intent to do wrong and therefore the costs of extracting the oil and other minerals should be allowed, this embraces the cost of drilling and completing the wells and the cost of administering same in

order to deliver the oil at the surface for delivery into commerce. This is the rule announced by our own Supreme Court in the case of Cook vs. Gulf Refining Co., 135 La. 609, and satisfies the equitable principle that no man should enrich himself at the expense of others.

Commonly speaking minerals cannot be approved until brought to the surface and the true owner should undoubtedly be awarded their value at that stage but not until the labor and expense of the person doing the work of bringing them from the bonds of the earth have been allowed where this person is acting in moral good faith tho under a mistaken idea as to the true conditions of the title. On this basis I think the government may recover not only from the oil company, defendants, who developed and brought to the surface the oil, but also from the marketing company who received the oil at the well from the producing company and also from the persons to whom royalties were paid to the extent of such payment, C. C. of La., 2452, Thornton vs. Oil & Gas Co., page 43; 135 La. 990, Elder vs. Ellerbe.

Since all the evidence was put in there is no dispute as to the amount of the oil extracted and marketed from the wells up to June 30, 1917, inclusive. I find as a fact that the amount of oil so extracted by the Producers Oil Co. and delivered to the Texas Company up to June 30, 1917 inclusive, to be 247,348.27 barrels and that its value at the time of the extraction was $293,-234.18.

I find that the cost of drilling and equipping the wells, operating same and delivering the oil at
47 the surface, to be $113,912.45. The difference between these two items is $179,321.73, representing the net value of the production. Of this amount the Producers Oil Co., paid to the Jeems Bayou Fish-

ing & Hunting Club $36,654.27 as royalties, leaving the Producers Oil Co. and the Texas Company the net amount of $142,667.46. These amounts must be returned to the true owner of the land, the United States.

I therefore recommend:

1. That the land in question be decreed to be the property of the United States.

2. That defendants be permanently estopped from transferring on same, or removing any oil or other minerals therefrom, and that they deliver the property to the United States and that the lease of said land by the defendants, Jeems Bayou Hunting & Fishing Club and the Producers Oil Company be annulled.

3. That the United States recover from the Producers Oil Co., and the Texas Company in solido, $142,667.46.

4. That the United States recover from the Producers Oil Co., the Texas Company and the Jeems Bayou Hunting & Fishing Club, in solido, the sum of $36,654.27 for royalties paid by the said club.

5. I recommend further that the rights of the Government be recovered from defendants of the value of all oil produced from the wells on the land since June 30, 1917 inclusive.

No. 1153, United States vs. Lane, et al.
No. 1158, United States vs. Gulf Refining Co., of La.
No. 1162, United States vs. Southwestern Gas & Electric Co., et al.
No. 1163, United States vs. J. M. Walling, et al.
No. 1164, United States vs. Robediere, et al.

The above cases were consolidated for the purposes of trial and the following stipulations of fact were made by counsel for both sides.

1. "That the surveys made herein by Arthur D. Kidder, Supervisor of Surveys, and his associates and assistants, were made under instructions issued by the Commissioner of the General Land Office, as shown by letters of date September 27, 1913, and of December 1, 1916, from Clay Tallman, Commissioner of the General Land Office, to the said Arthur D. Kidder, Supervisor of Surveys, which will be offered in evidence herein by plaintiff, and that said surveys were made conformable to said instructions; that the surveys referred to herein are represented by certain official plats approved July 24, 1916, and March 28, 1917, which will be offered in evidence by plaintiff; that the plats made by the said Arthur D. Kidder, or under his supervision hereinabove referred to, correctly depict the surveys as made by him, and that all the figures, measurements, courses, distances, elevations and topographic features shown on said plats are correct. It is also admitted that the said Arthur D. Kidder, Supervisor of Surveys,
48 correctly re-established and reproduced the survey made by A. W. Warren, Deputy Surveyor, of Township 20, North of Range 16 West, in strict accordance with the said original Warren survey, the said original survey being represented upon the official plat approved August 31, 1839.

2. That the contour line of 173.09 feet above mean Gulf level, established by the said Arthur D. Kidder, Supervisor of Surveys, as the mean high water elevation of Ferry Lake in 1812, when the State of Louisiana was admitted into the Union, and in 1839 when A. W. Warren made his survey of Township 20, North

of Range 16 West, was in reality the mean high water elevation of Ferry Lake and James Bayou, at such dates, and that the meander line of Ferry Lake and James Bayou as run by said Kidder follows said contour of 173.09.

3. That all of the tracts in controversy in these suits lie above the mean high water elevation of Ferry Lake as it existed in 1812, and 1839.

4. That the various tracts of land lying between the meander line of Ferry Lake and James Bayou as run by the said Arthur D. Kidder, and the line represented as a meander line upon the plat of said original Warren survey hereinabove referred to, including the tracts in controversy in these consolidated causes were in 1812 and in 1839, at all times since said dates, and now are lands in place and of the same character, geological formation; and quality as the lands surveyed by said Warren, as aforesaid; that said tracts of land are now and were in 1812 and 1839 and at all times since said dates, what is known in this locality as hill land covered with native forest trees and vegetation characteristic of hill land, and that all of said lands were at the dates mentioned and at all times subsequent thereto, uplands in character and existed as such at the time of the said Warren survey and in 1812.

5. That the various tracts of land embraced in the extension survey of said Arthur D. Kidder, Supervisor of Surveys, and represented upon the plats aforesaid, including the property in controversy in these consolidated causes, were not formed by accretion, or by the recession, or reliction of the waters of Ferry Lake or James Bayou since 1812.

6. That Ferry Lake is and was in 1812 and 1839 a navigable body of water.

7. This stipulation shall not be construed as an admission upon the part of defendants that the land in controversy were not included within the survey made by A. W. Warren, as a matter of law; the defendants contending that under the Warren survey their titles extended to mean high water elevation.

8. Plaintiffs and defendants shall have the right to offer evidence in these causes, and these admissions shall not be construed as preventing them, or any of them, from introducing additional evidence."

The total area involved in these suits is 79.95 acres. The Lane case involves Lot 1 of Sec. 3, T. 20, N. R. 16 West and contains 5.67 acres. The Gulf Refining Company of La. involves 11.49 acres. The Southwestern Gas & Electric Co., involves 27.87 acres. The Walling case involves 12.72 acres. The LaRobediere case involves 22.20 acres.

It will be seen from the above stipulation that the land involved was of the same character as that in the Jeems Bayou Hunting & Fishing Club, i. e.,
49 high land with high land timber growth, never at any time a part of the bed of the lake, but really the same quality and character of land as that actually within the Warren Survey.

It is also admitted that Kidder's survey in retracing Warren's work is correct; and from this follows the admission that the various areas contended for shown as a result of Kidder's reproduction of Warren's work, are correctly set forth, totalling 79.95 acres which were actually left out between the mean high water mark of the Lake and Warren's line. These admissions, which

correspond with the evidence which overwhelmingly proved the fact; put the cases in the same catigory it would seem, with the Jeems Bayou Hunting & Fishing Club wherein a finding in favor of the Government has just been made. Defendants, however, while conceding the above fact, contends these cases should be differentiated from the Jeems Bayou Hunting & Fishing Club case because the areas involved in each of these cases are comparatively very small and that the maxim de minimis lex non curat should apply.

They contend that in these particular cases the lines run by Warren are substantially meander lines, admitting that, as contended for by plaintiff, at some points in skirting the shore of Ferry Lake Warren did abruptly (and technically speaking wrongfully) quit the shore line almost at right angles and deliberately left out, between his courses and the real senuosity of the lake shore, high timbered lands in place, but that he also embraced within his meander as land, bits of water almost equalling the land left out, which resulted in the Government losing nothing, because in patenting the particular areas the Government got paid for as many acres as if Warren had carefully followed the contour and sinuosities of the Lake—therefore, if Warren did wrongfully leave out between his meander and the actual shore, the high timber lands, it is a case damnum obsque injuria so far as the government is concerned. On page 4 of their brief defendants say with respect to the Lane case, "With respect to the Warren survey Kidder admits taking the meander line as the boundary, there were included 10.9 acres of
50 lake which never belonged to the United States, and there was omitted 8.38 acres of land which should have been included." Again on page 5, "Kidder testifies that taking the whole of the northern shore of Ferry Lake involved sections 3, 10, 11, 12, 13 and 24

surveyed by Warren, the area of land lying between the Warren meander line and Kidder's establishment of the 173.09 contour line, was 69.56 acres, while the same meander line of Warren's included within his survey and shown as land, an area actually lying in the lake and never belonging to the United States Government, of approximately 44 acres." Thus reducing the actual acreage of land owned by the government by the difference between 69.56 and 44 acres, or 25.56 acres of land." Also on page 5 the defendants say on this point, "With respect to land contested for in suit 1164 as being in sections 25 and 36, the area, 22.20 acres, is trivial when compared with the quantity of land surveyed." Warren's map of section 25 shows 29.25 acres; he left out 8.90 acres or nearly one-third of the land. The land contended for in Sec. 24 is 11.49 acres. Warren's survey shows 114.80 acres not counting this, 11.49 acres, or a shortage of about 10% of the actual high land. In section 13 the amount of land claimed as left out by Warren's survey is 27.87 acres; Warren's map shows 115 acres, nearly 16% of the actual area omitted. In Sec. 10 the amount claimed herein as unsurveyed is 12.72 acres, the other land in this section left out as shown in Jeems Bayou Hunting & Fishing Club is 116.89 acres or a total of 129.61. Warren's map shows 289.88 acres, which means nearly 30% of the actual high land in the section omitted by Warren.

Kidder describes the survey made by Warren of the land in Sec. 3 as follows:

In Lot 1 of Sec. 3 (United States vs. Lane), Warren began his traverse on the southern boundary of the section at a point which was then six feet under water. This point is not covered by the water now because the lake has receded. The second course emerges from the water, crosses the boundary of the lake and begins to

ascend the upland. His angle point 2, is above the 173.09 comtour. The third course is through timber, undergrowth and over highland above the 180 foot contour, and, instead of being near the border of the lake is back in the woods and large timber. His fourth course left the highland and went back in the direction of the lake. The fifth course paralleled the border of the lake but was below the contour being 6 feet lower than the mean water elevation. The end of
51 the fifth course was exactly on the 173.09 contour. The difference in elevation between the first and second course is over 8 feet, that is, between angle points one and two.

Mr. Kidder says he sighted through the telescope along this course and found that he was actually "out from the lake to a point of lowland beyond the border of the lake. In measuring along the line we were going over the low hill which projects out into James Bayou at this place running through upland, timber and undergrowth. There is nothing on the ground to indicate that the border of the James Bayou ever occupied that position."

The line does not parallel James Bayou and, if intended as a meander, it is absolutely incorrect, the error being manifest.

Warren began his traverse here below the mean high water elevation and returned to the bayou at a point which agrees exactly with the contour. The line runs over a hill and as a result Lots 1 and 2 of Section 3 were omitted. These two lots contain an area of 8.38 acres in one compact body. Warren also omitted Lot 3 containing 9.05 acres, making a total of 17.13 acres omitted in this section." (57.64).

Plaintiff's brief contends as follows: Kidder describes Warren's survey of Sec. 10 in reference to omissions of land contended for in lot 7, as follows:

"In lots 7 of Sec. 10, (United States vs. Walling), Mr. Kidder found it necessary, in reproducing Warren's line through Sec. 10, to begin at the meander corner on the eastern boundary of Sec. 10 which was set exactly on the 173.09 contour. After paralleling the lake for two courses from this point, Warren departed from it on the third course. Following the bearings and distances given in Warren's field notes, Mr. Kidder found that when he sighted through the telescope "N. 78° W" on the third course, the line ran back into the woods on high ground 8 feet above mean water elevation. The other courses were traced out in exact accordance with the Warren field notes. The turning points on the line bore no relation to the border of the lake and were made on upland a considerable distance from the water. On the last course Warren returned to the lake at the 173.09 contour. He departed from the lake at angle point 22, shown on the Resurvey Plat."

The same comment is made as to the way in which he departed from the shore line as respects the areas omitted in the other suits. In fact, an inspection of the supplemental map filed by plaintiff marked "F" and admitted by defendants to be absolutely correct, shows the angles and methods used by Warren in his departure from the shore line in the cases complained of herein, and it cannot be questioned that at the points named Warren failed to run a correct meander line showing the sinuosities of the lake shore and at these points his line bears no true relation to the body of water, nor does it approximate a contour.

In reply to defendant's contention as to the comparatively small area involved in these consolidated suits, the Government's contention (which I find to be

a fact) is that Warren's survey of Township
52 20, N. R. 16 West, omitted 1047.67 acres of high land, 987.77 acres actually demonstrated as being omitted by subsequent corrective survey of Boyd, Bristol and Kidder; the remainder of 59.90 acres left out "is made up of strips of ground between the Traverse and the lake which were left out because the line was run at too high an elevation. In these instances, however, the traverse was run parallel with the lake and followed the contour with some degree of reason. Hence no corrections were made in the survey in this respect. The actual water surface at the time of the Warren survey which was represented as land on his plat was 65 acres." Warren described the total area of this township as 10328.09 acres, when in point of fact at the time of his survey and in 1812 when Louisiana came into the Union, the Township actually contained 11375.76 acres of high timber lands. Warren's omissions were nearly ten per cent of the whole land and this area lying unsurveyed by Warren naturally remained as the property of the United States. Defendants, however, contend that the areas included in these suits which undoubtedly lie outside of the actual so-called meander line of Warren and between it and the mean high water mark of the Lake shore, should be held to have passed to them under the patents obtained by their authors in title because the meander lines of Warren of the Ferry Lake shore are strictly meander lines defining the sinuosities of the water, altho a pronounced divigation was made by Warren from the shore line at the points complained of. The defendants do not deny that their authors in title got the acreage called for by the map of Warren and the patent; they only claim that taking the whole of the northern shore of Ferry Lake, including Sections 3, 10, 11, 12, 13, and 24 surveyed by Warren, the area of land lying

between the Warren meander line and Kidder's establishment of the 173.09 contour line was 69.56 acres and that Warren's survey included within it about 44 acres as land which in fact was water; so the Government as respects this part of the Township would only lose the difference, or 25.56 acres, which defendants virtually admit still technically remain in the Government as left out of the Warren survey. As above stated, there is no complaint by the original patentees of any of this land that they paid the government
53 for water instead of land and that they are entitled to relief from the government; on the contrary, as far as area is concerned in the original patenting of these lands, the area marked on the map and actually surveyed by Warren was accepted as land and must be presumed as closed, and defendants cannot now eke out any title to land, admittedly not within the boundaries of the property patented, on the ground that their ancestor in title did not get quite the acreage and therefore the present defendants are entitled to hold entirely new areas belonging to the Government as an offset. Title to new and separate areas of land cannot be acquired in this way. Legal title to land from the sovereign government can be acquired in only one way,—by written transfer commonly called a patent. Boldly stated the proposition of defendants is in effect that if the government has made a gain by selling water for land (the real fact as to this contention as respects this township is as follows:

As stated above Warren left out as is now conceded 1047.67 acres of high land from his survey. In this township, defendants contend that it would be equitable to permit the occupant of a piece of unsurveyed land in this township which land is about equal to the water area previously sold, in various parts of the township to compensate, and defeat the government's claim for

said unsurveyed land by replying to the suit, "you have already been paid for all the land actually in this Township and I should keep this piece and you will really suffer no loss." As stated above defendants can only keep the areas in question by showing title. They contend the area is so little and when it was left out by Warren, so utterly worthless, that the government's claims should be dismissed on the ground of de minimis lex non curat. It is true that most of the cases dealing with the discussion of the difference between a meander line and a boundary line (the question herein involved) deal with larger areas than in these present consolidated cases, and in these areas the Courts have not hesitated to apply the principles contended for by the Government in these cases. For instance, in the case of the Jeems Bayou Hunting & Fishing Club the area actually involved was 85.22 acres. In the survey of Warren, his intention to leave out of his survey lands which
54 he should have included, according to law and his duty, was manifested just as plainly in his omission of 10 acres as in the case of a hundred acres and if in the case of the omission of a hundred acres the claimants contention is rejected and the 100 acres held to be public land belonging to the United States, why should the sale be different as respects the claimant of 10 acres? It is true that ordinarily litigations do not arise unless the fight is worth while as to values and it may be that the government, but for the discovery of oil or gas in this region would not have elected to bring suit when only 10 or 25 acres were involved, but its right to do so would have been in existence even tho it elected not to enforce it. As a matter of fact these comparatively small pieces of land are now of great value, these in the above consolidated cases valued at over $100,000.00 It seems to me the rule repeatedly announced by the Supreme Court of the United States

in defining the differences between a boundary line and a true meander line must and should be applied regardless of the superficial area involved. In these 17 suits the areas in question range all the way from 5.67 to 85 acres and the proof is just as clear in the smallest as in the largest area that Warren's so called meander lines (at the points complained of) violated the rules respecting such line, to-wit: that they must in fact fairly represent the sinuosities of the body of water and practically approximate and parallel the same.

I find as a fact that at the points complained of, these lines of Warren were not run according to the above principles but that he arbitrarily in such instances left the shore at right angles thereto, blazed his way thro high lands heavily timbered, and then returning to the shore line some distance apart from his departure. The lands so left out must be held to be unsurveyed public lands and I find in favor of the Government that the areas herein involved are in that catigory and should be decreed to be the government's property.

For the reasons given in the Jeems Bayou Hunting & Fishing Club, I do not consider the defendants herein in moral bad faith, and consider that the expenses incurred by them in drilling, equipping and administering the wells on the premises should be allowed in settling with the Government. The amount of
55 oil extracted by the Producers Oil Company and taken away by the Texas Company I find as follows:

In 1153 United States vs. Lane, et al., 42,735.23 barrels and the value thereof $36,430.73. Amount for drilling well and operating same, $16,047.23. The difference between the total value of oil and counterclaim, $20,383.50.

The royalties paid were:

To C. D. Lane, $1,517.95.

To Board of Commissioners, Caddo Parish Levee Board, $4,553.84.

I find there should be judgment against:

1. The Producers Oil Co. and Texas Co., in solido in the amount of $14,311.44 being value of total production, less counterclaim and royalties.

2. The Producers Oil Co. and Texas Co. and C. W. Lane in solido in sum of $1,517.95, amount of royalties paid Lane.

3. The Producers Oil Co., Texas Co., and Board of Commissioners, Caddo Parish Levee Board, in solido, for $4,553.84, amount royalties paid Board of Commissioners, Caddo Parish Levee Board.

In suit 1158, United States vs. Gulf Refining Company, I find the total production herein to be $6,986.62, but the drilling and operating expenses were, as I find, $10,191.00 and no royalties paid. The well was not profitable and the Gulf Refining Co. actually lost money in the operation so I recommend no money judgment against the defendants in this case, only a decree in favor of the government as owners of the land and entitled to possession thereof.

In United States vs. Southwestern Gas & Electric Co., No. 1162, I find the total value of oil extracted to be $29,946.94 (32,034.87 barrels) plus the pipe line earnings $3,203.48,—total income secured by the Gulf Refining Co. from the well. The expense of drilling and operating was $12,784.68. The royalties paid to Caddo Oil Co., $933.30. The royalties paid to the Southwestern Gas & Electric Company, $747.99.

I recommend judgment against:

1. The Gulf Refining Co., of La., for $4,899.91, being difference between the royalties and counterclaims and total value of production, not including oil con-
56 tained in pipe line.

2. Against the Gulf Refining Co. and Caddo Oil and Gas Co., in solido, for $933.30, amount royalties paid to Caddo Oil & Gas Co., by Gulf Refining Co.

3. Against Gulf Refining Co. and Southwestern Gas & Electric Co., in solido, for $3,747.99, amount royalties paid the Southwestern Gas & Electric Co., as to which no expense was incurred.

In 1164, United States vs. LaRobadiere, et al.

In this case the oil produced by the Gulf Refining Company was $8,200.60 in gross value with a counterclaim for expenses actually incurred for drilling and operating of $12,771.25. There were royalties paid to Mrs. LaRobediere amounting to $3,075.21, and there should be judgment against her for that amount.

As the well was a losing venture for the Gulf Refining Co., I think no judgment in money should be given against it, but simply against it giving the land as belonging to the government.

It appeared in the course of the trial that an added royalty was paid to Blanchard, Barret & Smith of $1,205.07, and the right to litigate this matter is reserved to the Government.

No. 1163, United States vs. J. M. Walling, et al.

I find the oil produced by the Gulf Refining Company of La., of the value of $77,278.79, with a counterclaim for drilling and operating $20,643.87; difference between gross value of oil and the counterclaim, $56,634.87, for which judgment should go against the Gulf Refining Company.

It appeared in the trial that royalties had been paid

by the Gulf Refining Co., to H. L. Heilperin, Natalee Oil Co., J. A. Thigpen and S. L. Herold, and the rights of the Government should be reserved as against them.

No. 1155 United States vs. Chas. J. Green, et al;
No. 1160 United States vs. W. H. Enders, et al.; consolidated.
No. 1165 United States vs. A. C. Loucks, et al.,

Two of the above cases were consolidated, the third tried separately, but they are not distinguished however from the other cases already considered by me,
57 and the facts are practically the same and the law applicable thereto practically the same as in the cases already considered by me.

The Greene case involves lots 2 and 3, Sec. 27, containing 65.77 acres as shown by Supplemental map of plaintiff marked F. The defendants claim under a patent calling for 147.25 acres as per Warren's survey; they got all their acreage and are claiming the 65.77 acres never surveyed by Warren or more than a third of the area actually purchased by Green from the United States; if defendants' contention is upheld he would have 213.03 acres when he actually bought and paid for 147.25 acres. The methods used by Warren in leaving out of this survey high timbered lands above overflow in the cases already decided, were used in this case, it being abundantly proven in these three cases that Warren ran his so called meander line as far as 1200 feet from the true shore, working his way through high lands well timbered. This is well illustrated on the map "F" and also on the topographical map in evidence marked Plaintiff "B". The well was not profitable, the expense of drilling and operating incurred by the oil company exceeding the value of the oil and no judgment for money should be made against the Amateur Oil Company, but the Louisiana Oil Refining Co.,

bought the productions from the Amateur Oil Co., and out of the oil paid a royalty to Greene of $210.79 for which there should be judgment in solido against it and Greene. Afterwards the Louisiana Oil Ref. Company took over the well and paid a royalty to Greene of $186.78 and made a profit on its production of $557.75 net production after deducting the cost of production.

There should be judgment therefore against:

1. C. J. Greene and Louisiana Oil Refining Co., in solido, for $210.79.

2. Louisiana Refining Corporation, $557.78.

3. Louisiana Refining Corporation and C. J. Greene, in solido, 185.65, and against all defendants recognizing the land as the property of the United States. In this case Greene virtually acknowledged that this land was United States property. He made on Jan. 22, 1913, a mineral location embracing fractional NW ¼ of section 27, between the traverse line and the lake. In this location the land is referred to as "unsurveyed." He
58 did same on June 17, 1910, "for all lands below the United States Traverse in N. W. ¼ Sec. 27." No effort to develop the land under this location was made, but this incident shows he did not consider that he was the reparian owner of the area in dispute.

No. 1160, United States vs. Enders, et al.

This property embraces 66.20 acres being lots 5 and 6 of Sec. 9, and immediately adjoining the land in controversy in Jeems Bayou Hunting & Fishing Club, lying between said Jeems Bayou Hunting & Fishing Club land and Ferry Lake. There was no serious dispute of the Government's title, defendants' pleadings asserting they

had no convictions on the subject but that during 1910 veritably believing same was government land, made a mineral location; prior to the time of the withdrawal order of the President December 15, 1908. The Standard Oil Co. entered a plea of nolle contendere, but admitted it had taken oil from the land under a division order and paid the purchase price to Heilprin and asked for judgment against him in case it was held. The defendants really make no serious claim to the property as owners, but content themselves under the mineral location. The proof of the Government's ownership is as complete as in the Jeems Bayou Hunting & Fishing Club case and for the reasons therein given, judgment recognizing the United States as owners of the area in question should be entered.

As to the claim on the mineral location, your Honor has already decided that the withdrawal order of Dec. 15, 1908, was applicable to this land. So it appears defendants are without any right or legal title to the land. The Standard Oil Co. admit running oil from the land valued at $1,577.24 and paid out in royalties to the mineral locators $197.16. Judgment should go against the Standard Oil Company for $1,380.08 (with reservation of its rights to recover this amount and the $197.16 royalties against Heilprin from whom they purchased the oil) and against the defendants Levi Cooper, W. T. Crawford, W. H. Enders and Standard Oil Co., of La., in solido, for $197.16. I recommend a judgment in favor of the United States for the land in question as prayed for by the petition, and for the above amount against the defendants.

No. 1165, United States vs. A. C. Loucks, et
59 al.

The area involved is 14.13 acres, being lot 1 of Sec. 27. The evidence in the Greene case and Jeems Bayou case was offered herein besides the testimony of

Kidder and others, who with him explored the status and character of these omitted areas, and for the same reasons heretofore given by me in the cases already decided, I find the area in question was high timbered land omitted by Warren from his survey (the defendants traced title to a patent from the United States conveying 123.49½ acres and the original patentee and the defendants got this full acreage independent of the area of 14.13 acres herein claimed) and that judgment should go in favor of the United States as being the owner of the said area as not having been entered in Warren's survey. It remains to consider what money judgment should be rendered.

For the reasons given in the early part of this report, citing Cook vs. Gulf Refining Co., 135 La., 610, and in case of Elder vs. Ellerbe, et al., 135 La., 990, before any recovery by the Government for oil extracted, I think the cost of drilling and equipping the wells and operating same, should be deducted.

Inasmuch as the well cost to drill and operate, $8,439.37 and the total oil taken out was only $494.00, no judgment should go against the Producing Co., to-wit: the Standard Oil Co., but out of the exploration and operation Loucks received 61.75 and the Gulf Refining Co. 52.42 and there should be judgment against them in favor of the United States for those amounts and I so recommend.

In the discussion of each case under the title of Quantum and Basis of Recovery, the contentions of the Government with respect to the amounts which should be allowed are set forth in detail. There should be a decree in favor of the Government in the respective sums heretofore stated. In addition to the recommendations previously mentioned, it is respectfully recommended:

1. That the lands involved in the respective suits be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the Public Land or Mineral laws of the United States.

60 2. That the muniments of title under which the defendants claim may be declared null and void and held as nought insofar as they may include, directly or indirectly, the property in controversy in these suits, and, to that extent, that the said leases and transfers be cancelled and annulled. This recommendation, of course, does not include the patents on which the claims of riparian ownership are predicted, the validity of which patents is not denied by the Government. The patents, however, do not include any property in suit. This prayer of the bill of complaint relates to the leases and other transfers by which a conveyance of the various tracts was sought to be made.

3. That the lands described in the bills of complaint be adjudged and decreed to be the property of the United States, free and clear of all claims of the defendants and that the possession of said land may be restored to plaintiff.

4. That said defendants during the progress of this cause and finally and perpetually thereafter, may be enjoined from setting up any claim to said lands or any part thereof, and from creating any cloud upon the Government's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said lands, or in any manner using the same, or extracting oil or other minerals therefrom.

5. That a receiver be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon and any other property and instrumentalities thereon used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and to preserve the same.

6. That defendants be ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said lands since January, 1918, and to pay plaintiff the value thereof as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced since January 1, 1918, be reserved.

In all of the above recommendations for payment of money judgments, I recommend that interest be allowed thereon at the rate of 5% per annum until paid, from the filing of this report.

Respectfully submitted,

E. H. RANDOLPH,
Master in Chancery.

61 Indorsed:—Opinion and Recommendations E. H. Randolph of the Master in Chancery. Recorded in Chancery Order Book, Vol. 5, Folio 559-587. Filed Jan. 11, 1919, 11:25 A. M.

62 (EXCEPTION TO MASTER'S REPORT BY C. J. GREENE, JR., AND THE LOUISIANA OIL REFINING CO. AND LA. OIL REFINING CORPORATION).

Now comes C. J. Greene, Jr., the Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation, defendants herein, and except to the report of E. H. Randolph, Special Master, filed in this case on the eleventh day of January, 1919, and for cause of exception show:

(1).

That the Master in his said report stated and certified that the land in controversy is the property of the United States as unsurveyed land, whereas he should have certified that the property in controversy is an integral part of

The West Half of the Southwest Quarter and Fractional Northwest Quarter of Section Twenty-seven, Township Twenty, Range Sixteen, Louisiana Meridian.

patented to Charles J. Greene, Jr., October 2nd, 1911.

(2).

That the Master states and certifies in his said report that "'Greene virtually acknowledged that this land was United States property", when in fact no such acknowledgment was at any time made, and no such effect can properly be given to the mineral locations made by Greene.

(3).

That it was error in the Master to find that a judgment should be rendered against the Louisiana Oil Refining

Company and the Louisiana Oil Refining Corporation, or either of them, by reason of their having purchased the oil produced from the well drilled on the land involved in this cause, when in truth and in fact, the Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation committed no wrongful act and caused the plaintiff no injury in purchasing such oil in the due course of its conduct of its business.

63 (4).

Furthermore, defendants except to the report of the Master in recommending the payment of interest on the judgment to be rendered at five per centum per annum from date of filing of this report instead of recommending that interest should run from the date of judgment, in event that judgment should be rendered against these defendants.

N. C. BLANCHARD,
BLANCHARD, GOLDSTEIN & WALKER,
Solicitors for Charles J. Greene, Jr., Louisiana Oil Refining Company and Louisiana Oil Refining Corporation.

Indorsed:—Exceptions of C. J. Greene, Jr., The Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation. Filed Jan. 30, 1919.
B.

64 (PLAINTIFF'S EXCEPTION TO MASTER'S REPORT).

Now into this Honorable Court, comes plaintiff, the United States of America, appearing herein through undersigned counsel, and excepts to the report of Hon. E. H. Randolph, Master in Chancery herein, insofar as the said report recognizes the defendants as innocent trespassers, and allows the counterclaim filed by them, for the following reasons, to-wit:

1. The Master erred in not finding and in not giving consideration to the fact that on December 15, 1908, the President of the United States, acting through the Secretary of the Interior, withdrew the land in controversy from settlement, entry or other form of appropriation in order to conserve the public interest and in aid of such legislation as might thereafter be proposed or recommended, and that said withdrawal was ratified and continued in effect by the withdrawal order issued by the President, July 2, 1910.

The evidence showing such withdrawals consists of documentary testimony offered by plaintiff in the case of the United States v. Sam W. Mason, et al, No. 1172, on the docket of this Honorable Court, being plaintiff's exhibits "A" "B" "C" "D" "E" "F"—1, 2, 3, 4, 5" "G" "H" "I" "J" "K" "L" "M" "N" "O" "P" "Q" "R" "S" "T", which said exhibits were offered in evidence in the case of the United States vs. Jeems Bayou Fishing & Hunting Club, et al, No. 1157 (record in said cause p. 9), and all testimony in said case was offered by reference in the present cause (record in present suit p. 1). This Court held in the said Mason case that the withdrawals included Township 20 N. Range 16 West, and prohibited mineral locations on the public lands described

therein, which ruling is applicable to this suit, and was so recognized by the Master in his report.

2. The well drilled by defendants on the land in controversy was not begun until the year 1916 (testimony of James W. Neal, record 67).

While no claim was, or could be, asserted by
65 defendants under the mining laws or under mineral locations, said evidence was relevant to the issue, because the Master found that the defendants had no title to said land, and the testimony above referred to shows that defendants in taking and removing said oil violated said withdrawal orders, and prevented the disposition of said oil by Congress.

3. That no testimony was offered by defendants, nor otherwise adduced, to show that they acted in good faith in drilling and operating the wells in question. That the defense of innocent trespass is an affirmative defense, and the defendants did not prove, or attempt to prove, that they extracted and removed the oil from plaintiff's land through mistake or inadvertence, nor did they show that they acted on the advice of counsel, or in the belief that they were the owners of the property. The wrongful taking of the property of another, in the absence of all other evidence, raises a presumption that the trespasser took it intentionally, wilfully or in reckless disregard of the rights of the owner, and this presumption was not overcome, nor sought to be overcome in any manner whatever by defendants.

4. The Master, in his report, did not find the total value of the oil produced from said land, but the uncontradicted testimony in the record (testimony of James W. Neal, record 67, 68) shows that said well, drilled by

the Amateur Oil Company, produced 2071.90 barrels of the value of $3,171.53, of which amount the Amateur Oil Company produced $1,475.57, representing the value of the production from August 10, 1916, until May 15, 1917. Thereafter the well was operated by the Louisiana Oil Refining Corporation. The production of the well from August 10, 1916, until May 15, 1917, was delivered by the Amateur Oil Co. to the Louisiana Oil Refining Company. The Louisiana Oil Refining Co. paid C. J. Greene, Jr., a royalty of $210.79. The Louisiana Oil Refining
66 Corporation produced oil from said well of the value of $1299.52 and paid C. J. Greene a royalty of $185.65.

Wherefore, plaintiff prays that these exceptions be sustained, and accordingly, that the counterclaim filed by defendants be rejected and disallowed, and that there be a decree in favor of the United States and against the defendants as follows, to-wit:

Against the Amateur Oil Company and the Louisiana Oil Refining Co., in solido, in the sum of	$1475.57
Against C. J. Green, Jr., Amateur Oil Company and Louisiana Oil Refining Co., in solido, in the sum of	210.79
Against the Louisiana Oil Refining Corporation in the sum of	1299.52
Against C. J. Greene, Jr., and the Louisiana Oil Refining Corporation, in solido, in the sum of	185.65

Said sums aggregating the full value of the production of oil from said land, as shown by the undisputed testimony in said cause.

Plaintiff prays that in all other respects the said report and recommendations of the Master be confirmed and made the decree of this Honorable Court. Prays for all orders and decrees necessary, and for general relief.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Filed Jan. 30, 1919.

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67 (OPINION OF THE COURT).

In Re: Government Oil Suits. Western Dist. of Louisiana.

Beginning in July, 1917, the United States filed eighteen suits against various persons to have certain land decreed the property of the United States, withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States; to cancel certain leases of the said land to various oil companies; to enjoin any further exploitation of the land; and for an accounting from the various parties who had drilled for oil, or purchased it from the drillers, or otherwise had come into possession of the oil.

The cases were referred to the Honorable Edward H. Randolph, as Special Master, and in due course he filed his reports. The land in controversy is all located in what is known as the Caddo Lake, or Ferry Lake, Oil District, in Caddo Parish, Louisiana. In each case the Master has reported in favor of the United States and has stated an account against the defendants who claim to own the land,

against those who hold under oil leases and those who have purchased the oil extracted, either from the owners, or lessees.

Certain fundamental facts govern all the cases. It appears that in 1838 most of the land in question was surveyed for the United States by Warren. In making his survey he undoubtedly left out certain portions of land, inconsiderable as to acreage but now extremely valuable because of the underlying oil deposits. In 1916 the land was resurveyed by Kidder, and the disputed areas included in the survey. Some of the defendants claim riparian rights to the land. There is no doubt, however, that all of the land included in the resurvey was high land in place at the time the original survey of Warren was made and he simply was in error in running his lines, which is not at all surprising, considering the unsettled character of the land at that time and the difficulties surveyors must have encountered.

The land was withdrawn from entry first by a proclamation of President Roosevelt in 1908, and later by proclamation of President Taft in 1910. The land lies ad-
68 jacent to Caddo or Ferry Lake and Jeems or James Bayou. It is contended by some of the defendants that Warren intended the actual shore line to be the boundary line of his survey, and the lines he actually ran, or reported that he had run, were meander lines to determine the approximate areas of the survey. In some of the cases it is admitted that the land is public domain and the defendants claim under the mining laws. A further contention is made that that there was no ownership of the oil in the Government, that oil is different to minerals of a solid character and is not susceptible of ownership until brought to the surface and separated from the soil. The Master has found against all of these contentions, and in clear and able opinions has disposed of them. It would

be useless for me to attempt to supplement the report of the Master and in my opinion his findings should be approved. The Master allowed interest from the day of the filing of his report. It is contended if ultimate judgment is against the defendants interest should be allowed only from the day of judgment. Again I must agree with the Master. The filing of his report is tantamount to the verdict of a jury and it is usual to allow interest in Federal Courts from the date of verdict rather than from the date of Judgment. It is particularly urged that there could be no judgment against the various pipe lines who purchased the oil from the drillers on the theory above stated that the government had no ownership in the oil until reduced to possession. I cannot agree with this contention either. The ownership of the Government is somewhat different to that of a private proprietor and the integrity of the Government's title in any and all considerations demands that it should have a right of action against any one profiting by a violation of the laws of the United States intended as conservation measures.

The Government has excepted to the report of the Master in allowing the defendants to set-off as against the judgment for the value of the oil the cost of producing it, contending that the parties were not in good
69 faith. Considering the extreme uncertainty of the law and all of the facts in the case, I must decide this point against the Government. This disposes of the general contentions in all the cases.

In suit No. 1155, U. S. vs. C. J. Greene, it is contended in argument that the Master's report was erroneous in rendering judgment against the Louisiana Oil Refining Corporation and not against the Amateur Oil Company from whom it purchased. This objection is not made in the exceptions to the Master's report filed. The Master found there should be no judgment against the Amateur

Oil Company because the well was not profitable and the expense of drilling and operating exceeded the value of the oil. He recommends judgment against the other defendants, however, because they actually got the oil. I see no reason to disagree with the conclusions of the Master. The decree will not prevent an adjustment of equities between the parties.

In case No. 1160 U. S. vs. Henly, et als., it is contended in argument on behalf of the Government that no counterclaim was plead or proved. I find no special exception in the record to this effect. The judgment as recommended is supported by the answers to interrogatories in the record.

The case of the U. S. vs. Thomas J. Stockley, No. 1166, is the only case presenting any difficulty, but considering the views expressed in overruling the preliminary objection, I think on the whole the Master's report should be confirmed.

The labor of the Court in these complicated cases has been much lightened by the Master through his able report and by counsel through their fair and lucid arguments and briefs. All of them are entitled to the thanks of the Court.

All exceptions will be overruled and decrees will be entered in all these cases in accordance with the suggestions of the Master. Jurisdiction in each case will be retained for the purpose of adjusting any further equities between the parties.

RUFUS E. FOSTER, Judge.

July 15/19.

(Opinion). Filed Jul. 17, 1919, W. B. Lee, Clerk. U. S. Dist. Court. West. Dist. of Louisiana.

70 (DECREE).

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

I. That the report filed herein January 11, 1919, by E. H. Randolph, Special Master in Chancery, be and the same is hereby approved and confirmed; and, accordingly:

II. That the land described in the bill of complaint, namely, Lots Numbers Two (2) and Three (3), of Section Twenty-seven (27), in Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing Sixty-five and seventy-seven Hundredths (65.77) acres, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and ex-officio Surveyor General for the State of Louisiana, be and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

III. That the lease made by Charles J. Greene to Lee Kinebrew and H. R. Ratcliff, recorded April 25, 1916, in Book 108, page 90, of the Conveyance records of the Parish of Caddo, State of Louisiana, be and the same is declared null and void and held for naught, and any and all other leases, transfers and conveyances made by or to defendants affecting the said land, insofar as they may include directly or indirectly the above described property, be likewise declared null and void and held for naught,

and, to that extent, all of the said leases, trans-
71 fers and conveyances are annulled and shall be cancelled.

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of the plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of the said land shall be restored to plaintiff.

V. That the said defendants, namely, Charles J. Greene, Junior, Amateur Oil Company, Incorporated, Louisiana Oil Refining Company, and Louisiana Oil Refining Corporation, shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas or minerals, on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and, accordingly, that a writ of injunction issue restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of Charles J. Greene, Junior, and the Louisiana Oil Refining Company, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Two Hundred and Ten and 79/100 ($210.79) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VII. That the United States of America do have and recover of and from the Louisiana Oil Refining Corpor-

ation, and the said defendant is hereby condemned and ordered to pay to plaintiff, the full sum of Five Hundred and Fifty-seven and 78/100 ($557.78) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

72 VIII. That the United States of America do have and recover of and from the Louisiana Oil Refining Corporation and Charles J. Greene, Junior, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Hundred and Eighty-five and 65/100 ($185.65) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

IX. That the said defendants be and they are hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

X. That the said defendants be, and they are hereby condemned and ordered to pay all the costs of this suit.

XI. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreveport, Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil,

with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree,
73 furnish bond, with good and solvent surety, to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of Five Hundred ($500.00) Dollars, which said bond may hereafter be increased, or reduced as the Court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil or other property that may come into his hands as receiver. The said receiver shall surrender possession of said land and all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said receiver, to obtain such accounting from the said receiver as the Court may order, to require the delivery to the United States of such land and property, and the accounting and payment to be made by the receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do and perform such other acts, in relation to the ad-

ministration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

Thus done, read and signed in open Court this 4th day of August, 1919.

RUFUS E. FOSTER,
United States Judge.

Indorsed: Decree. Filed Aug. 12, 1919.
B.

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74 (PETITION & ORDER OF APPEAL.)

To the Honorable Judge of the District Court of the United States for the Western District of Louisiana, sitting within and for the Shreveport Division.

Now come Charles J. Greene, Jr., the Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation, defendants herein, and with respect show they are aggrieved by the judgment made and entered in this cause on the 12th day of August, 1919, and do hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit, for the reasons specified in the assignment of errors which is filed herewith.

And they pray that their appeal be allowed with supersedeas; that citation issue as provided by law; and that a transcript of the record, proceedings, documents and papers upon which said decree is based, duly authenticated, may be sent up to said United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans in the State of Louisiana.

And they further pray that proper orders touching the security to be required to perfect their appeal be made.

And desiring to supersede the execution of said decree and judgment, the said defendants do herewith tender bond in such amount as the Court may require for the purpose and pray that the allowance of their appeal of supersedeas be issued.

BLANCHARD, GOLDSTEIN & WALKER,
Solicitors for Chas. J. Greene, Jr. La. Oil Co., and La. Oil Refining Corp.

ORDER.

The petition iis granted and the appeal is allowed, and shall operate ass a supersedeas to the extent that judgment in the abowe numbered and entitled cause is rendered against the defendants, Charles J. Greene, Jr., the Louisiana Oil Refiming Company and the Louisiana Oil Refining Corporatiion, upon the said defendants filing bond in the sum of Fifteen Hundred ($1500.00) Dollars with sufficient surety, conditioned as required by law.

Granted at New York in the State of New York on this the 9th day of September, 1919.

RUFUS E. FOSTER,
Judge.

75 SUPERSEDEAS BOND ON APPEAL.

United States District Court for the Western District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1155 In Equity.
Charles J. Greene, Jr., et al.

Know all men by these presents: That we, Charles J. Greene, Jr., Louisiana Oil Refining Company and Louisiana Oil Refining Corporation, as principals, and New Amsterdam Casualty Company of Baltimore, Maryland, as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above numbered and entitled cause, in the full sum of fifteen hundred ($1500.00) dollars, for the payment of which, well and truly to be made, we hereby bind ourselves, our successors and assigns, firmly and in solido, by these presents.

Dated at Shreveport, Louisiana, on this the 9 day of September, 1919.

The condition of the above obligation is such that:

Whereas on the 12th day of August, 1919, in the District Court of the United States for the Western District of Louisiana, in a suit pending in the aforesaid Honorable Court, wherein the United States of America was plaintiff and the aforesaid Charles J. Greene Jr., Louisiana Oil Refining Company and Louisiana Oil Refining Corporation were among the defendants, the aforesaid suit being numbered on the Equity Docket of the aforesaid Court as No. 1155, a decree was entered and signed against

the aforesaid Charles J. Greene, Jr., Louisiana Oil Refining Company and Louisian Oil Refining Corporation; and

Whereas the aforesaid Charles J. Greene, Jr., Louisiana Oil Refining Company and Louisiana Oil Refining Corporation have obtained an order of appeal with supersedeas to the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, States of Louisiana;

Now, therefore, if the said Charles J. Greene, Jr., Louisiana Oil Refining Company and Louisiana Oil Refining Corporation shall well and faithfully prosecute
76 such appeal and shall answer all damages and costs if they fail to make their plea good, then the above obligation to be void, otherwise to remain in full force and effect.

CHARLES J. GREENE, JR.
LOUISIANA OIL REFINING COMPANY,
LOUISIANA OIL REFINING CORPORATION,
By BLANCHARD, GOLDSTEIN & WALKER.
Solicitors.
NEW AMSTERDAM CASUALTY COMPANY,
By JUSTIN R. QUERBES.
Surety. (Agent & Atty-in-fact.

Approved this 9 day of September, 1919.
RUFUS E. FOSTER,
Judge.

77 (DEFENDANTS' ASSIGNMENT OF ERRORS)

United States District Court for the Western District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1155 In Equity.
Charles J. Greene, Jr., et al.

Now comes Charles J. Greene, Jr., the Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation, by their solicitors, Blanchard, Goldstein & Walker, and say that the decree entered in the above numbered and entitled suit on the 12th day of August, 1919, is erroneous, unjust and prejudicial to them as defendants; and defendants in connection with their petition for an appeal and as a specification and assignment of errors respectfully show:

(1).

That the Court erred in holding that the property in controversy in the above numbered and entitled suit is public land or property of the United States.

(2).

That it was error in the Court to hold that the property in controversy and other lands lying between the meander line of the survey of A. W. Warren, United States deputy surveyor, and Ferry Lake is not a part of the fractional northwest Quarter (Fr. NW¼) of Section Twenty-seven (27), Township Twenty (20) North, Range Sixteen (16) West, of the Louisiana Meridian, situated in the Parish of Caddo, Western District of Louisiana,

patented by the United States to Charles J. Greene, Jr., under and pursuant to act of Congress approved May 20th, 1862, being an act to secure a homestead to actual settlers of the public domain and other acts supplemental thereto.

(3).

That the Court erred in holding that the meander line run by A. W. Warren, United States deputy surveyor, and not Ferry Lake, is the line of boundary to said fractional Northwest Quarter (Fr. NW¼) of Section Twenty-seven (27), Township Twenty (20) North, Range Sixteen (16) West, of the Louisiana Meridian, situated in the Parish of Caddo, Western District of Louisiana.

78 (4).

That the Court erred in receiving in evidence the evidence of A. D. Kidder, Lester L. Clements, L. Z. Crawford, Henry C. Cowles, Frank Leverett and other witnesses to impeach the correctness of and verity of the A. W. Warren survey of 1839 on the ground of fraud, mistake and gross error, because plaintiff did not allege and did not plead such fraud, mistake or gross error, and defendants objected to the introduction and reception of the aforesaid evidence upon the trial of this case.

(5).

That the Court erred in holding that there were any facts or circumstances shown in the evidence of any notes made by the aforesaid A. W. Warren of his survey, or in the report of the aforesaid survey made by the said A. W. Warren, or in any document filed in evidence upon the trial of this case that disclosed or tended to disclose any

intention at the time of making such survey or at any time prior to 1913 on the part of the said A. W. Warren, or any other officer of the United States, to limit the aforesaid fractional Northwest Quarter (Fr. NW¼) of Section Twenty-seven (27), Township Twenty (20) North, Range Sixteen (16) West, of the Louisiana Meridian, situated in the Parish of Caddo, Western District of Louisiana, to the actual traverse lines instead of limiting same by the waters of Ferry Lake.

(6).

That the Court erred in not sustaining the plea of estoppel of the defendants against the plaintiff, arising from the letter of S. Whendall, Commissioner of the United States Land Department, to the Honorable N. C. Blanchard, written under date of February 8th, 1897, and the letter of Honorable George Otis Smith, Director, dated November 6th, 1908, to the Secretary of the Interior, in both of which it was stated that there were no public lands belonging to the United States in said Section Twenty-seven (27), Township Twenty (20) North, Range Sixteen (16) West, situated in the Parish of Caddo, Western District of Louisiana.

(7).

That the Court erred in rendering judgment against the Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation, or either of them, by
79 reason of their having purchased the oil produced from the well drilled on the land claimed by plaintiff in this suit, since the Court found as a matter of fact that the cost of drilling the aforesaid well was more than the value of the oil produced therefrom, and

found that as a matter of fact all of the defendants in the above numbered and entitled suit were in good faith in drilling the aforesaid well and appropriating the aforesaid oil.

(8).

That the Court erred in rendering judgment against the Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation, or either of them, for purchasing the aforesaid oil produced from the aforesaid well on the above described tract of land, while at the same time holding that no judgment should be rendered against the Amateur Oil Company, which had sold the oil to the Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation, which judgment in favor of the Amateur Oil Company must have been predicated on a finding that the Amateur Oil Company was entitled to appropriate to its own use the oil produced from the aforesaid well because it had acted in good faith in drilling the well and because the value of the oil produced from it did not equal the cost of the drilling operations.

Wherefore, defendants pray that the aforesaid decree entered by the United States District Court for the Western District of Louisiana be reversed.

BLANCHARD, GOLDSTEIN & WALKER,

Solicitors for Charles J. Greene, Jr., the Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation.

Indorsed: Petition for Appeal: Order: Bond: Assignment of Errors. Filed Sept. 15, 1919.

80 (PLAINTIFF'S PETITION FOR APPEAL).

To the Honorable, the Judge of the District Court of the United States, for the Western District of Louisiana:

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, and, with respect, represents:

That on August 4, 1919, this Court entered a final decree in said cause, from which the defendants herein have appealed, and that in said decree there was, in part, error greatly to the prejudice and injury of plaintiff as will more fully appear by the assignment of errors, filed herewith. Plaintiff desires to take a cross appeal from said decree to the United States Circuit Court of Appeals of the Fifth Circuit.

Wherefore, it is prayed that a cross appeal may be allowed to plaintiff in this cause from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, and that proper orders for the allowance of such appeal may be made by this Court.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

81 ORDER.

The foregoing petition for cross appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed a cross appeal herein, from

this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 10 day of Nov., 1919.

RUFUS E. FOSTER,
United States Judge.

ASSIGNMENT OF ERRORS ON PLAINTIFF'S CROSS APPEAL.

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,
v. No. 1155 In Equity.
Charles J. Greene, Junior, et al.

Now comes plaintiff the United States of America, and in connection with its petition for a cross appeal herein, presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to-wit:

I.

The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counterclaims of the Amateur
82 Oil Company, Incorporated, and the Louisiana Oil Refining Corporation, for costs and expenses incurred in producing said oil, and in not entering a decree in favor of the plaintiff for the total value of said oil.

II.

The Court erred in allowing to each of said defendants, as an offset or counterclaim, the cost of the production of said oil and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had been withdrawn from any appropriation whatever by orders of the President of the United States, dated, respectively, December 15, 1908, and July 2, 1910, which orders were issued for the purpose of conserving the public interest and in aid of pending and proposed legislation. The said well was drilled in violation of each of said orders and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said wells.

III.

The Court further erred in applying herein the rules relating to a case of innocent trespass, for the reason that there was no evidence whatever to show that the defendants acted in good faith in extracting and removing the oil in question.

IV.

The Court further erred, in any event, in finding and holding that said defendants were entitled to deduct from the value of the oil extracted from the land in suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit or counterclaim.

83 Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim for the cost of drilling, equipping and operating the well in suit, and that a decree be rendered and entered, in favor of the plaintiff herein, for the full value of the oil extracted and removed from the land in controversy, as shown by the report of the Master in Chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to enter a decree in favor of the plaintiff for the full value of said oil without offset or deduction of any kind.

Plaintiff further prays that in any event, the costs of drilling and equipping said well be deducted and excluded from any allowance that may be made to defendants as an offset or counterclaim herein.

Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed: Plaintiff's Petition for Cross Appeal, order thereon, and Assignment of Errors. Filed Nov. 12, 1919. B.

84 (NOTE OF EVIDENCE).

United States District Court In and for Western District of La. At Shreveport, Louisiana.

United States.
vs. No. 1155.
Charles J. Greene, Jr., et al.

United States District Court, in and for the Western District of Louisiana, at Shreveport, La.

United States,
vs. No. 1160.
W. H. Enders, et al.

Evidence taken before the Honorable E. H. Randolph, Special Master, in the above causes, commencing on May 3rd, 1918, in the United States Court room, at Shreveport, Louisiana.

R. B. Cook was appointed Stenographer to report the evidence and qualified by taking the proper oath.

Appearances.

Hon. R. A. Hunter, appeared on behalf of the Government;

Messrs. Blanchard & Smith, and J. Hampton Story, for defendants.

Above cases consolidated for the purpose of trial.

It is agreed in these cases, that the evidence heretofore adduced in the case No. 1157, entitled United States vs.

Jeems Bayou Fishing and Hunting Club et al, may be offered in this case and considered as if taken in these cases as far as applicable to the issues of these two consolidated cases, the Plaintiff and Defendants having the right to offer further testimony and the same is hereby offered by the plaintiff and defendants, on their respective behalfs as per the above agreement.

Counsel for Plaintiff offers in Evidence, extract copy of the Louisiana tract book, showing, as far as it does Section Twenty Seven, Township Twenty North Range sixteen West, certified by D. K. Parrot, Acting Commissioner of the General Land Office, marked Plaintiff "A".

85 Defendants interpose the following objections to the admissibility of the surveys of 1913-1914, March 28, 1917, and of its field notes and plat, made under the authority of the Department of the Interior of the United States, on the ground as follows, to-wit:

1.

Because of its incompetency, irrelevancy and immateriality.

2.

On the further ground that the said survey, so made was beyond the authority, control and jurisdiction of said Secretary of the Interior, in this, that the land described as Lots Eight, Nine and Ten of Section Ten, Township Twenty North, Range Sixteen West, were not included and embraced in the Executive Orders of withdrawal dated December 5, 1908, and July 2, 1910, respectively.

3.

On the further ground that the said survey purports to be a corrective resurvey of Section Ten, Township Twenty North, Range Sixteen West, embracing lands, as alleged and described in the bill of complaint as Lots Eight, Nine and Ten, the title to which was not in the United States at the time of said survey, but was, and is now, in private ownership having passed by patent of the United States to S. D. Pitts, according to the official survey, field notes, and plat of A. W. Warren, United States Deputy Surveyor, in 1839, and approved by the Commissioner of the General Land Office on August 31, 1839, and from Pitts passing through mesne conveyances to the Jeems Bayou Fishing and Hunting Club, one of the defendants herein.

4.

On the ground that said survey of March 28, 1917, being made subsequent to the official survey of A. W. Warren, United States Deputy Surveyor, in 1839, and of the time of the issuance thereon of patent to the Fractional Southwest Quarter of Section Ten, Township Twenty North, Range Sixteen West, that the plat of survey of Warren showing that the fractional quarter of said section borders on Ferry Lake, or Jeems Bayou
86 and for which said reasons the surveys of 1913-1914, March 28, 1917, is inadmissible to show that title to any lands lying between the fractional quarter section and the waters of Jeems Bayou, or Ferry Lake, remains or is in the United States, and further, that the said survey, if admitted, would, in effect, deprive S. D. Pitts and his assigns of the land lying between the meander of said fractional quarter section and Jeems Bayou,

or Ferry Lake, acquired and vested under said patent, bottomed on the approved official survey of A. W. Warren, United States Deputy Surveyor.

5.

On the further ground that the said surveys of 1913-1914, March 28, 1917, were made prior to such date, are incompetent to, impair, contradict, reconstruct, explain or impeach the verity of A. W. Warren's official survey, field notes and plat, or of the patent to which the same had been issued to S. D. Pitts, and to affect, abridge or deny the exercise and enjoyment of the access and approach to the waters of said Jeems Bayou, or Ferry Lake, or of any riparian rights accorded to said property bordering on said Ferry Lake under the laws of the State of Louisiana.

6.

On the further ground, that the said purported corrective survey, or resurvey, is inadmissible, for the reason, that if admitted and given effect, it would deprive, abridge and deny to said S. D. Pitts and his assigns, without due process of law, all of his rights, title and interest, right of property and privileges in said lands lying between the meander of said quarter section and Ferry Lake, acquired and vested by the patent issued by the United States, in 1860, bottomed upon the approved official survey, field notes and plat of A. W. Warren, United States Deputy Surveyor, approved by the Commissioner of the General Land Office, in contravention to and in violation of the Fifth Amendment of the Constitution of the United States, and would, further, abridge, deprive and deny to the said S. D. Pitts and his assigns, without due process of law, all of his, or their rights,

87

title and interest, rights of property and privileges to the access to the waters of said Jeems Bayou, or Ferry Lake, accorded by the laws of the State of Louisiana, in violation of and in contravention to the Fourteenth Amendment of the Constitution of the United States.

7.

That the said surveys of 1913-1914, and March 28, 1917, and all such notes are incompetent to show error, omission or fraud in the survey of A. W. Warren, United States Deputy Surveyor, made in 1839, and of the Bristol Survey of 1871, if any for reason, that said errors, omissions or fraud cannot affect bona fide and innocent purchasers who have acquired the said Fractional Southwest Quarter of Section Ten, Township Twenty North, Range Sixteen West, on the faith of the correctness of said official survey of A. W. Warren, on which the patent was issued, and, further, that no proof of omission, error or fraud is admissible as such is not specifically alleged in the pleadings or in the bill of complaint.

Objection overruled, as same goes to the effect of the evidence.

To which ruling of the Court, Counsel for Defendant excepts, and asks that this note stand in lieu of formal bill of exceptions.

Filed in evidence and marked exhibit "A."

Counsel for Defendants asks that this objection, ruling and bill of exceptions be made to apply to all evidence offered on this trial and it is so ordered.

Counsel for Defendant objects to that part of the record shown in pencil, as it does not appear to be any record made by the Land Office, similar to other entries made in the Department and does not carry any explanation, as to why it appears on the tract book.

Same ruling and bill of exceptions.

88 Counsel for Plaintiff offers in evidence certified copy of Louisiana tract book, showing, as far as it shows Section Nine Township Twenty North, Range Sixteen west.

Same objection, ruling and bill of exceptions.

Filed and marked exhibit "B".

J. W. NEAL, a witness for the Plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. Hunter:

Q. Mr. Neal, I show you extract from the tract book marked "A" and "B", just offered in Evidence and I will ask you to explain the pencil marks on those copies? Are you Special Agent of the Land Office?

A. Yes, sir.

Q. Are you familiar with the proceedings in the General Land Office?

A. I am.

Q. Do you know why these pencil memorandums appear on these copies?

A. Yes, sir.

Q. Please explain their meaning

A. The pencil memorandums appearing on the certified copies of the tract book, are memorandas made by the Clerks having charge of the tract books, in the Land Office, in some cases the pencil notations show the date and fractional part of section that was offered for sale by the Government. Other pencil notations refer to applications that were made by parties, giving the number, which refers to other records of the receipt of the applications.

Q. I will ask you to state whether or not, from your knowledge of the Land Office proceedings and from your knowledge of the tract books, the pencil notations appear on the original tract books and the copies you have been shown, are correct copies of the original tract book? I want to know whether or not the pencil notations are on the original tract book, and if these are copies of the originals, just as they appear?

89

A. These are exact copies of the tract book as they appear in the General Land Office at Washington, and the numbers and words written in pencil on these tract books are written in pencil on the certified copies.

Q. The certified copies are simply reproductions of the tract book?

A. The certified copy reproduces the tract book exactly.

Q. Do the pencil notations effect the land in controversy in these suits?

A. They do not.

The objection heretofore made is overruled and bill of exceptions is reserved.

Counsel for Plaintiff offered in Evidence certified copy of withdrawal dated December 15th, 1908.

Objected to by Counsel for Defendants, as the withdrawal order was not authorized by law.

Objection overruled by the Master, same going to its effect.

To which ruling, Counsel for Defendants except and ask that this note stand in lieu of formal bill of exceptions.

Filed in Evidence and marked exhibit "C."

Counsel for Plaintiff also offers in Evidence certified copy of withdrawal 'petroleum reserve No. 4', dated July 2nd, 1910.

Filed in Evidence and marked Plaintiff "D."

Counsel for Plaintiff offers in Evidence certified copy of the records of the United States Land Office at Baton Rouge, La.

Filed and marked Plaintiff "E."

Counsel for Plaintiff offers in Evidence Supplemental Plat of Township Twenty North of Range Sixteen West, approved by the Commissioner of the General Land Office March 28th, 1917, together with the memo-
90 randa and illustrative profile and legend thereon.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked exhibit "F."

Counsel for Plaintiff offered in Evidence the Supplemental Topographical Plat of Township Twenty North of Range Sixteen west, together with legend and certificate thereon.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked exhibit "G."

Counsel for Plaintiff offered in Evidence Supplemental Plat of Township Twenty North of Range Sixteen West, with the memoranda and legend thereon, approved by the Commissioner of the General Land Office, March 28th, 1917.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked exhibit "H."

Counsel for Plaintiff offered in Evidence Topographical Map of Township Twenty North of Range Sixteen west was legend and certificates thereon, approved by the Commissioner of the General Land Office March 28th, 1917.

Same objection, ruling of Court and bill of exceptions.

Filed in Evidence and marked exhibit "I."

ARTHUR D. KIDDER, a witness for the Plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. Hunter:

Q. Mr. Kidder, you are the Arthur D. Kidder, Supervisor of Surveys who testified in the case No. 1157, entitled United States vs. Jeems Bayou Hunting and Fishing Club?

A. I am.

Q. You are the Mr. Kidder who executed the survey referred to throughout that testimony?

A. I am.

91 Q. I direct your attention to the land involved in these consolidated suits, in suit of United States vs. Charles J. Greene, Jr., et al, No. 1155, and I will ask you to state whether or not the land tinted on the Supplemental plat marked Plaintiff "F" is the land involved in that suit?

A. It is, and the area tinted embraces Lots Two and three of Section Twenty-Seven, Township Twenty North of Range Sixteen west.

Q. Will you give the area of those two lots?

A. The combined area of the two lots is sixty-five and 77-100 acres.

Q. What are the numbers of the lots?

A. The lots involved in this suit is lots two and three of section twenty-seven.

Q. What Township and Range?

A. Township Twenty North, of Range Sixteen West.

Q. Are those two lots included in your resurvey, and your extension survey of this Township?

A. They are included in that Extension survey executed in the winter of 1916-1917.

Q. As shown on the supplemental plat approved by the Commissioner of the General Land Office March 28th, 1917?

A. Yes, sir.

Q. I will ask you to state whether or not, in your survey of the land in dispute, in the Charles J. Greene case, was made under the instructions of the Commissioner of the General Land Office, which have been offered in evidence in the suit of the United States vs. the Jeems Bayou Hunting and Fishing Club?

A. It was.

Q. I will ask you to state whether or not the mean high water elevation of Ferry Lake, as established by your survey was at the 173.09 foot contour in 1839, according to your figures?

A. It was.

Q. You have set forth in your testimony in the case of the United States vs. The Jeems Bayou Hunting and Fishing Club, the reasons why you fixed that contour, have you not?

A. Those reasons were set forth quite exhaustively.

Q. I will ask you to say whether or not, all
92 of your testimony with respect to that contour, as given in the Jeems Bayou Hunting and Fishing Club case, applies likewise to the case of the United States vs. Charles J. Greene, et al, and the property therein involved?

A. I think that in its general relation to the subject that it is equally applicable to both cases.

Q. I will ask you to state whether or not the testimony you have given in these cases, relative to the 173.09 foot contour likewise applies to the case of the United States vs. W. H. Enders, et al?

A. It does.

Q. The Enders case involves lots five and six of section nine?

A. It does.

Q. These lots are shown on the supplemental plat approved by the Commissioner of the General Land Office March 28th, 1917?

A. On the plat approved March 28th, 1917, and marked Plaintiff "H", the same area is shown on Plaintiff's Exhibit "I."

Q. What is the area of the lots involved in the Enders case?

A. Sixty-six and 29-100 acres.

Q. I will ask you to state whether or not the property involved in these consolidated cases, was omitted from the survey of this Township, made by A. W. Warren in 1839.

Same objection, ruling and bill of exceptions as heretofore.

A. These areas were omitted from the Warren survey of 1839?

Q. Have you examined the area involved in these consolidated suits?

A. I have.

Q. Have you been over the ground frequently and carefully?

A. Yes, sir.

Q. Have a thorough examination?

A. I have.

Q. I will ask you to state what are the characteristics of the land in Section Twenty-seven, lots two and three, involved in the suit of the United States vs. C. J. Greene, Jr., et al?

A. The general characteristics of this area, included in Lots two and three of section twenty-seven, are that

it has the appearance of very high land, and it is in fact high land, with reference to the mean high water
93 elevation of Ferry Lake; the land in its original state was all heavily timbered—part of the timber has been cleared, but there remains a considerable forested area—the slopes of this land are very decided—the mean high water elevation of Ferry Lake, as determined in the resurvey was placed at 173.09 contour and the high elevation within the area of lots two and three, of section twenty-seven, runs up to a plateau thirty-seven feet above the lake level—the land in these two lots is very undulating, through both lots there are a number of draws or ravines that drain the hill lands lying to the South East of the land in Section Twenty-seven surveyed by Warren. The elevations of the land in Lots Two and Three of Section Twenty-seven, is about the same as the land in the Fractional Northwest quarter of section twenty-seven, surveyed by Warren, and in tracing out the Warren meander lien through Section Twenty-seven, especially through the North West fractional quarter, there is not the slightest difference in the general character of the land lying to the right or to the left of his traverse line—The general soil characteristics and topography, as well as the timber growth are the same on Lots Two and Three of Section Twenty-seven, as on the fractional North West quarter of Section Twenty-seven, surveyed by Warren. This land in my opinion was never a part of the bed of Ferry Lake, and no part of it has been formed by the recession of the waters of Ferry Lake, or by any process of accretion.

Q. This land in Section Twenty-seven forms a part of the fractional North West quarter of the section, as included in the Warren survey, do they not?

A. These lots are in the fractional Northwest quarter of Section Twenty-seven, but a distinction is to be drawn,

the area surveyed by Warren should properly be termed Fractional North West quarter of Section Twenty-seven, according to the plat approved August 31st, 1839, this should all be designated as lots two and three of Section Twenty-seven, which lies within the North West quarter of the Section.

Q. Was there any part of the land involved in this suit, ever in the bed of Ferry Lake, in your opinion?

A. In my opinion it was never a part of the bed of Ferry Lake.

Q. Mr. Kidder, what have you to say with regard to the Warren meander line through the fractional
94 North West quarter of Section Twenty-seven, as to whether it traverses up land throughout its entire length?

A. It does traverse up land throughout its entire length. There is no place, through the North West fractional quarter of Section Twenty-seven, where Warren's meander line approaches the border of Ferry Lake, either for elevation or for negligible distance?

Q. I will ask you to state whether or not Warren's meander line is as high as twenty-seven feet above mean high water elevation as established by you?

A. It is. That elevation will be found on Warren's traverse line between angle points Numbers seven and eight, as shown on Exhibit "G."

Q. Now how far is that from the real shore, according to your opinion, as you established it?

A. Through the high part of the Warren traverse, between Angle point Seven and Eight, the average distance is about one thousand feet to the true border of Ferry Lake.

Q. Thirty-seven feet above the altitude of the lake?

A. Yes, sir.

Q. Mr. Kidder, will you please indicate on the Supplemental Topographic Plat, offered in Evidence in this case and marked Plaintiff "G" by the letters "A" and "B" the point where Warren's meander line traverses ground thirty-seven feet above the level of the lake as established by you?

(Witness marks same on map).

Q. I understand you to say that the average distance between the letters "A" and "B", or from the letters "A" and "B" to the margin of Ferry Lake, or mean high water elevation, as you established, is One thousand feet?

A. Yes, sir.

Q. I will ask you to state whether or not, at any point, if Warren ran his meander line less than twelve feet above the mean high water elevation as you established it?

A. Broadly speaking there is no place through the fractional North West quarter of Section twenty-seven, where Warrens' meander line was twelve feet or
95 less above the mean high water elevation of Ferry Lake. There should be an exception noted to that statement, in the case of crossing two ravines. These ravines are lower than the tops of the hills, and in crossing in the ravines the meander line does get down to an elevation of about seven feet above the mean high water elevation of Ferry Lake, but the slopes along the Warren meander line in these places is very decided, that is to say that the meander line instead of following a contour was going up and down hills, going from the tops of the hills to the bottoms.

Q. Without reference to the contour?

A. Without reference to contour.

Q. I will ask you to state whether the Warren meander line represents the margin of Ferry Lake, or any other

stream or body of water, or water course, as it appears on the ground itself?

A. It does not.

Q. State whether or not the land in controversy, in the C. J. Greene suit is represented on the Warren plat as being a part of Ferry Lake?

A. It is.

Q. I show you plat of the Warren survey offered in evidence in the case of United States vs Jeems Bayou Fishing and Hunting Club, No. 1157 and I will ask you to state whether according to that plat the land involved in this suit is represented as a part of the bed of Ferry Lake?

A. It is.

Q. Mr. Kidder, is it possible to give the average elevation of Warren's meander line of Section Twenty-seven?

A. Yes, that is easily done.

Q. Will you please do that?

A. I have determined the average elevation of Warren's meander line or traverse through the fractional North West quarter of Section Twenty-seven, by this process. I have taken points along this traverse line, at intervals of two chains and fifty links, one hundred and sixty-five feet apart, at twenty-two points and taken the average elevation of the twenty-two, and the average elevation as thus determined is 198 feet above mean Gulf level or twenty-five feet above the mean high water elevation of Ferry Lake as it existed at the time of the Warren survey.

96 Q. Is there any indications whatever upon the ground or anywhere in the Township or on the lake that the mean elevation of Ferry lake was above the 173.09 foot contour in 1812 and 1839?

A. There is no indication whatever that the mean high water of Ferry Lake was above the 173.09 foot contour.

Q. I will ask you to state whether or not A. W. Warren terminated anywhere near Section Twenty-seven, in any of his section lines or ran any of his meander courses approximately on the 173.09 foot contour, as established by you?

A. He did, both to the East and West, in the same Township. In the Northeast quarter of Section Twenty-seven, Warren's meander line agrees very closely with the contour 173.09, counting from the meander corner on the eastern boundary of fractional section twenty-seven to angle point number five; again in section twenty-eight to the west of the land in suit, Warren's meander line agrees very closely with the 173.09 foot contour.

Q. In that connection, please state whether or not, if Warren had run his meander line around Section Twenty-seven, at the same elevation as the points you have mentioned, where he followed the contour approximately, would he or not have included the land in controversy in this suit?

A. He would have included every acre of the land involved in these suits.

Q. In that event the land involved in this suit would have been included in his survey?

A. It would.

Q. What have you to say with regard to the seventh courses of Warren's meander line through the central part of the northwest quarter of section twenty-seven, as surveyed by him, in regard to the elevation, above mean Gulf level?

A. Along the seventh courses of Warren's meander of section twenty-seven, the elevation is approximately twenty-seven feet above the mean level of Ferry Lake at the time of the Warren survey.

Q. What is the highest point reached on that course?

A. The highest point on the course reached at angle point seven which is on the contour of two hundred feet above mean Gulf level, or twenty-seven feet above the level of the lake at the time of the Warren survey.

Q. I will ask you to state the average distance
97 along the Warren on the Warren meander line of Ferry Lake?

A. Along Warren's seven meander course the average distance to the border of Ferry Lake is eleven hundred feet.

Q. State whether or not Warren's meander line along its entire course is a substantial distance or not from the actual mean high water elevation of Ferry Lake?

A. Through the fractional northwest quarter of section twenty-seven, it is at a point a very considerable distance from the actual border of Ferry Lake.

Q. Mr. Kidder, will you please state the average distance from the Warren meander line to the lake, approximately?

A. The nearest distance from the Warren meander line, through the fractional northwest quarter of section twenty-seven, northwest of the border of Ferry Lake, at a sharp right angle, is about nine hundred feet.

Q. Please state whether or not the land in controversy in this case, embraces a part of the large area omitted from the Warren survey?

A. It does, this land lies adjacent to similar land omitted from the Warren survey and designated in the official plat, Plaintiff Exhibit "G", as lot one of section twenty-seven, and lots one and two of section twenty-three.

Q. What is the area of the entire body of land omitted in sections twenty-seven and twenty-three?

A. The area of this whole body of land in sections twenty-three and twenty-seven, omitted in the Warren

survey and lying north of the Warren traverse line in section twenty-seven is ninety-seven and 64-100 acres.

Q. Then the area that you have mentioned lies in one compact body of land?

A. It does.

Q. What are the characteristics of the land omitted by Warren in Section twenty-three, are they similar to the land omitted in section twenty-seven?

A. The general characteristics are the same, although the extreme elevation is not as quite as high. The extreme elevation is found in the fractional north-
98 west quarter of section twenty-seven, especially along the point between the points marked "A" and "B" as shown on Exhibit "G."

Q. State whether or not the land omitted from the Warren survey in section twenty-seven, is about as high, or averages as high as the land included by him in that section?

A. I think in a general way I can state with safety that the land omitted by Warren in Section Twenty-seven, averages as high as the land included in Section Twenty-seven, as surveyed by Warren.

Q. Mr. Kidder, is the land that is involved in this suit, which was omitted by Warren, up land?

A. It is.

Q. High land?

A. It is high land, and good drainage at every point.

Q. Is the slopes sufficient so that it could be cultivated without artificial drainage?

A. Yes, in fact the slope in places are too great for normal farming methods, that is hill sides, but there is no place on either lot two or three of section twenty-seven but that the land is fit for cultivation without artificial drainage.

Q. I understood you to say, that Warren's line in section twenty-seven did not follow the contour of the lake?

A. That is true.

Q. I will ask you to say whether or not Warren's meander line along the line in controversy, is a correct meander line, if it be intended to represent the margin of Ferry Lake?

A. Warren's traverse line through the fractional north west quarter of section twenty-seven, cannot be considered a correct meander line, in the sense that it represent the border of Ferry Lake or represented the border of Ferry Lake at the time of the Warren survey, and this line as surveyed by Warren, does not conform to any of the several requirements of a meander line, as set forth in surveying rules.

Q. Mr. Kidder, as a surveyor, and from your knowledge of the line what have you to say, with reference to whether Warren erred in running his traverse line at the elevation and in the position and in the direction in which it is run?

A. Warren's survey is very much in error in
99 that respect.

Q. State whether or not, he in your opinion committed a manifest error in running the line in the position, and elevation at which he did run it, by omitting the area involved in these suits?

A. In my opinion, Warren, surveyor, is manifestly in error, as determined by every test that can be given to his so called meander line through the fractional section twenty-seven, in the northwest quarter?

Q. Is there or not, a well defined bank on the shore of Ferry Lake, along the land in controversy?

A. There is. This bank has the appearance of a bluff, that is at an elevation somewhat above the mean high water elevation of Ferry Lake. There is a definite es-

carpement agreeing with the mean high water elevation of Ferry Lake, and on the ground above the border of the lake, there is a distinct bluff, entirely through the fractional northwest quarter, with the exceptions of where the ravines or draws empty into the lake.

Q. The bluff is above the mean high water elevation as established by you, 173.09?

A. It is, but only a short distance removed in horizontal distance.

Q. Referring to the height of that bluff above the mean high water elevation 173.09, what would you say, just approximately?

A. That bluff averages from ten to fifteen feet above the border of the lake in some places, may be somewhat higher.

Q. It is a pretty high bluff?

A. So considered when compared with the general elevation around the border of Ferry Lake.

Q. I will ask you to state whether or not, Warren according to his plat of survey, surveyed any portion of section twenty-three?

A. Warren did not include any portion of section twenty-three in his survey.

Q. You have included a portion of section twenty-three, in your survey, as shown on the plat?

A. Yes, sir, that portion is seventeen and 79-100 acres, and Warren failed to establish any part of the line between sections twenty-three and twenty-seven.

100 Q. What have you to say with reference to whether or not, that land in section twenty-three, which immediately adjoins the land in section twenty-seven, omitted by Warren, was or was not a part of the bed of Ferry Lake in 1812 and 1839?

A. That land was not a part of the bed of Ferry Lake in 1812 or 1839.

Q. Was it land in place at those dates, in your opinion?

A. It was.

Q. Substantially as it exists today?

A. In practically every respect the land then was in the same condition as it is today.

Q. Referring to the land in section twenty-seven, the property involved in this suit, I will ask you to state whether or not it was land in place, substantially in the same condition as it is today, both in 1812 and 1839?

A. According to every test, we are able to give at this time, the land in lots two and three of section twenty-seven, involved in these suits, is in the same condition today as it was in 1812 and 1839, with the exception of certain clearings and improvements which have been made.

On Cross Examination he said:

By Mr. Smith:

Q. Mr. Kidder, I will show you patent of the United States to C. J. Greene, Jr., dated October 2nd, 1911, and I will ask you to examine that patent and state if the official survey referred to therein does not have reference to the A. W. Warren survey?

A. The description and area contained in the patent which you have submitted to me, have reference and refer to the official plat of Township Twenty North of Range Sixteen West, Louisiana meridian, approved August 31st, 1839, delineating the survey of A. W. Warren.

Q. That is the only survey it could have referred to, at that time?

A. At that time.

Q. I will ask you, if this patent don't read Fractional northwest quarter of section twenty-seven?

A. It does.

101 Q. I will ask you if the Warren map does not show that fractional section, as bordering Ferry Lake?

A. It does.

Q. Ferry Lake is a navigable stream?

A. It was a navigable lake, rather than a stream.

Q. Mr. Kidder, in running the meander line, the sinuosities of a stream, it is not for the purpose of boundary, but to get the acreage?

A. It is to get at the acreage contained in any fractional section and for the purpose of obtaining such data as may be necessary for the platting of the land, showing the conformation.

Q. I will ask you, if it is your understanding, relative to meander lines, in surveys of Fractional sections, it not for the purpose of defining the sinuosities of the banks of the stream, but is made to ascertain the quantity of land in the Fractional Section the sale of which is to be made and paid for by the purchaser? You notice that there is no reservation in the patent of any land in the Government?

A. No reservation whatever.

Q. No reservation on the part of the Government?

A. The only reservation of that kind, would be operative would be if this land would be covered by the withdrawal orders previously referred to by the Attorneys.

Q. The lots numbered two and three as shown on plaintiff's exhibit "F", those were added by your survey?

A. They were.

Q. They have only shown on the records of the Land Office, since your survey has been put on file?

A. They were entered on the tract book of date March 28th, 1917.

Q. You say that this land is in such shape that it could hardly be used for cultivation, the majority of the so-called omitted area?

A. A considerable part of it consists of rather steep or high slopes, although there is quite an area that is in cultivation and upon which the slopes are not too great for ordinary farming methods.

On re-direct examination he said:

By Mr. Hunter:

Q. Mr. Kidder, in that connection, I would
102 ask you whether or not Mr. Warren's meander line through the fractional northwest quarter of section twenty-seven, conforms to surveying rules?

A. It does not.

Q. Does it mark the sinuosities of Ferry Lake?

A. It does not.

Q. Mr. Kidder, I direct your attention to the other suit that we are trying, to the land involved in the other suit that we are trying, being case No. 1160, entitled, United States vs. W. H. Enders, et al. involving lots five and six of section nine, township twenty, north of range sixteen west, and I will ask you to state whether or not the land in controversy is shown in colors on the supplemental topographic plat marked Plaintiff "I?"

A. It is the area tinted blue on Plaintiff's Exhibit "I."

Q Were lots five and six of section nine omitted from the Warren survey?

A. They were.

Q. Please indicate on the plat just mentioned the position of the Warren meander line which excludes from his survey the land in controversy?

A. The position of Warrens' meander line, opposite the lots five and six of section nine, will be found to

the east, the nearest place being about a quarter of a mile distant, that part of the Warren meander line runing in and north and south direction, and bounding the fractional southwest quarter of section ten, as surveyed by Warren.

Q. Is the Warren meander line shown on the Supplemental Topographic plat, as the black line to the east of the land in controversy and separated from it by Lots eight and nine of section ten?

A. This Warren meander line at this place can be traced by following the numbers along his meander line between Angle point Ten marked "A", the "A" being at angle point No. 10, thence to angle point No. 11, then to angle points 12, 13 and 14.

Q. State whether or not the land in controversy in the Enders suit, No. 1160, consisting of lots five and six of section nine forms a part of a large area of land omitted by A. W. Warren from his survey, and if so, please state what lots were omitted by A. W. Warren and
103 what was the area omitted?

A. Lots Five and six of section nine, involved in the Enders suit is part of a larger area of land omitted from the Warren survey, which I will describe by reference to the official description contained in the General Land Office plat. This area embraced lots one and two of section ten, surveyed by Byron Bradley Bristol in 1871; it also includes the north half of the northeast quarter of section nine and lots one, two, three and four of section nine, surveyed by Bristol in 1871; it also includes lots one and two of section four surveyed by Bristol in 1871; it also includes lot three of section three; lots numbered three, four and five of section four; lots numbered five and six of section nine; lots six, eight, nine and ten of section ten; lots one and two of section fifteen; lot one of section sixteen, as shown on Supplemental plat

approved March 28th, 1917, marked Plaintiff Exhibit "H" and contains in all, five hundred and fifty-three and 26-100 acres.

Q. The area you have given of the acreage, represents the amount omitted from the Warren survey?

A. It represents the area omitted from the Warren survey in the sections and considers only the land lying in one body. It does not include and isolated parts, not a part of this large area.

Q. The lots in controversy forms a part of one large compact body of land comprising five hundred and fifty-three and 26-100 acres.

A. Yes, which was omitted by the Warren survey.

Q. Now, Mr. Kidder, you have testified in detail and at length in regard to the Warren meander line in Section ten, which excludes the land in controversy, from the land surveyed, have you not?

A. I have.

Q. Without going over the details, I will ask you to state whether or not in your opinion as a survey Warren, in running his meander line in section ten, in the position in which the line was run and at the place it was run, committed manifest error?

A. He did.

Q. Your statement is based upon the reasons given in your testimony in the case of the United States vs. Jeems Bayou Hunting and Fishing Club, No. 1157?

A. It is and on the result of the examination and retracement of the Warren meander line.

104 Q. You have also testified in the case of the United States vs. Jeems Bayou Hunting and Fishing Club, with regard to the Bristol line from the point "A" to point "C" on the resurvey plat of Township Twenty North of Range Sixteen west?

A. I have.

Q. Without going over the details of your testimony in that respect, I will ask you to state whether or not the Bristol line above referred to, if intended to represent the border of Ferry Lake or James Bayou, he committed in your opinion, manifest error in running the line in the position and in the direction he ran it?

A. I would say most certainly if Bristol intended that line to represent the true meander line of the border of Ferry Lake that it was manifest error on the part of the surveyor Bristol, and very apparent to anyone re-tracing his line, that it could not have conformed to the border of the lake.

Q. I will ask you to state whether or not the Warren and Bristol line above mentioned were run without regard to the border, shore conformation, or sinuosities of the lake, or any other body of water?

A. It was.

Q. Referring to lots five and six of section nine, the property in controversy in the Enders case, I will ask you to state whether or not those lots are up land?

A. Both of those lots are up land in character.

Q. Referring back to the Warren survey, I will ask you to state whether or not the land involved in the Enders suit, including the entire area computed by you as five hundred and fifty three and 26-100 acres, represented on the Warren plat, of his survey of 1839, as part of the lake?

A. That entire area is represented as a part of Ferry Lake.

Q. In your opinion, as a surveyor and from your knowledge of the situation, I will ask you to state whether or not the land in suit or any part of the area mentioned, was in 1812 or 1839 a part of the bed of Ferry Lake?

A. No part of the large area embracing the five hundred and fifty-three and 26-100 acres, could in any sense

of the term be considered as having been a part
105 of the bed of Ferry Lake or James Bayou at the date of the Warren survey, except a very small portion of a certain arm of James Bayou, which were included within the Bristol survey of 1871. Those arms are very limited in extent, and the eastward one, is in lot one of section ten, of the Bristol survey, and the second arm being found located in the north half of the northeast quarter of section nine in the Bristol survey. Those small areas represent merely the extreme limit of the two arms of James Bayou, and both were included within the Bristol survey.

Q. I will ask you to state whether or not, in your opinion, any of the land embraced in your extension survey, represented in the plat approved March 28th, 1917, was in 1812 or 1839, a part of the bed of Ferry Lake or James Bayou, or any other body of water?

A. No part of the area in sections three, four, nine, ten, fifteen and sixteen, the land represented on plat approved March 28th, 1917, were a part of the bed of Ferry Lake at the time of the Warren survey in 1839 or in 1812, the date of the admission of the State into the Union.

Q. Or a part of the bed of any other body of water?

A. They were not a part of the bed of any body of water.

Q. Does that same thing hold true, in regard to lots five and six of section nine, the lots in controversy?

A. It does.

Q. Mr. Kidder, have you made a careful examination and survey of the land in controversy?

A. I have.

Q. What have you to say with respect to its characteristics?

A. It is land that has a gently indulating or nearly level throughout its higher portion with gradual slopes

to the border of James Bayou to the western part of Lots five and six—the greater portion of lot six, probably a little less than ten acres is in cultivation. The balance of the two lots is in its native condition, being a mixed virgin forest with a mixed growth of hardwood species, such as are found in northwest Louisiana on similar lands. The soil is thin and poor, but it is fit for farming purposes. The drainage is good. At no point on lots five and six is there any pond, basin or marsh of any
106 description requiring artificial drainage before the land could be put in cultivation.

Q. What are the general types of trees growing on that land?

A. The general types on lots five and six, the higher portion there are to be found Post Oak, considerable black jack oak, some pine. On a portion of lot five, immediately in the vicinity of James Bayou and below the 180 foot contour, there will be found a heavy growth of overcup oak, some red gum, also be found a certain limited extent willow oak, along the border of James Bayou, but within the area of lots five and six.

Q. What are the elevations of lots five and six of section nine as shown on the Supplemental Topographic plat marked Plaintiff "I?"

A. The elevation of the higher portion of those two lots is 185 feet above mean gulf level, or twelve feet above the level of James Bayou.

Q. Right there, I will ask you to state approximately what portion of these lots lie above the 185 foot contour?

A. There is about forty per cent of the whole area above the 185 foot contour.

Q. What have you to say with reference to that portion above the 180 foot contour?

A. Approximately sixty-five per cent above the 180 foot contour.

Q. Referring to that portion above the 175 foot contour, state that proportion that is of the whole?

A. There is approximately ninety-five per cent of the whole area above the 175 foot contour.

Q. I will ask you to state whether or not the whole area of lots five and six, lie above the 173.09 foot contour?

A. It does.

Q. The 173.09 foot contour represents the mean high water elevation of Ferry Lake, as established by your survey?

A. It does and is marked on the Topographic plat marked Plaintiff "1", as the meander line of James Bayou, designated as angle points numbered 13 to thirty-two inclusive, and that line agrees with the 173.09 foot contour.

107 The taking of evidence was continued until May 6th, 1918, at ten o'clock.

May 6th, 1918, all parties being present the taking of testimony in the above numbered and entitled causes was resumed.

ARTHUR D. KIDDER, being on the stand his direct examination was resumed.

By Mr. Hunter:

Q. Mr. Kidder, is the club house of the Jeems Bayou Hunting and Fishing Club located on lot six of section nine?

A. It is located on lot six of section nine.

Q. I will ask you to state whether or not there is a decided slope of the bank at the Club house, visible to the eye?

A. There is, it is very perceptible to the eye, not exactly a bluff but the slope is sufficiently defined to be very apparent.

Q. Referring again to the land included in the suit of the United States vs. C. J. Greene, Jr., et al, I will ask you to state, whether the Warren traverse line of fractional northwest quarter of section twenty-seven, parallels Ferry Lake?

A. It does not.

Q. In which direction—you are familiar with the Warren field notes?

A. I am.

Q. In which direction was Warren running when he established that line, going towards the West or the East?

A. He was coming westward through the section, beginning the traverse line at the meander corner on the eastern boundary of section twenty-seven and terminating on the western boundary of section twenty-seven.

Q. Are there any angle points on his line, at several places?

A. There are angle points numbered one to eight inclusive, marking the turning points of his traverse line of section twenty-seven and those angle points, that is angle points seven and eight are in the fractional northwest quarter of section twenty-seven.

Q. State whether or not there is anything on the ground itself to justify the turns on that line?

A. No, nothing at all, both angle points seven
108 and eight are in the forest, at a high elevation above the lake. Both points are in the vicinity of twenty-seven feet above the lake level, and so far removed from the actual border of the lake that there is no occasion for having made an angle point at either of those places—Warren's traverse line at those two points is just

any irregular line that might be run through the woods, and does not agree with any topographic features of any kind.

Q. Does it follow the contour of the lake?

A. It does not.

Q. Does it mark the shore?

A. Not at all.

On Cross Examination he said:

By Mr. Smith:

Q. Mr. Kidder, the Warren survey don't show any section nine at all?

A. No.

Q. He neither shows any section twenty-three?

A. That is true.

Q. Those were put on the survey, after it was surveyed by you, only appear as sections according to your survey?

A. Yes. Bristol surveyed some land in Section Nine, and the survey of fractional section Nine was completed in the Extension survey represented on the plat approved March 28th, 1917.

Q. Section fifteen appears for the first time on your map?

A. It does.

Q. Also section sixteen?

A. Also section sixteen.

Q. Mr. Kidder, in the withdrawal order which reads 'Township Twenty North Range Fourteen to Sixteen, west, I will ask you, in making your survey, when you use the word 'to' a certain place, that terminates, with the termination, in this case the Range lies 16 to include 16, would you add the word 'inclusive', or what is the practice of the department?

A. The general practice of the department is to use the words or term 'inclusive' so as to be ex-
109 plicit.

On re-direct examination he said:

By Mr. Hunter:

Q. Mr. Kidder, did you have anything to do with the preparation of the withdrawal orders in these cases?

A. No, sir.

Q. Mr. Kidder, have you read the withdrawal orders involved in this suit?

A. I have.

Q. What is your interpretation of them, with respect to whether they include Township Twenty North Range Sixteen West?

A. I always interpreted the withdrawal order to include Township Twenty North, Range Sixteen West, particularly in view of the fact that the various papers in the Department, that came to me, for consideration in connection with the work to be done in Township Twenty North, Range Sixteen West, which was the only Township involving any field work, all made specific reference to the withdrawal order.

Q. Now in the withdrawal order of 1908, I will call your attention to the language used therein 'All of the Public lands in Townships 15 to 23, North Ranges 10 to 16 west' what have you to say with reference to whether or not that order includes Township Twenty North, Range sixteen west?

A. I would say that it was certainly intended to include Township Twenty North, Range Sixteen West, and would be so interpreted by the officials of the Interior Department and the General Land Office, and practically certain in view of the facts it is never the practice to

state Township or Range Numbers beyond what it is intended to include. For instance it is the general practice to use the word 'inclusive', but the mere omission of the word 'inclusive' is not a vital factor in interpreting what is meant in the description, because, if it intended to exclude Range sixteen the Range No. 16 would not have been written into the description at all. It would have read Ranges 10 to 15, and would generally have added the word 'Inclusive'.

Q. I will ask you to state whether or not there, from your investigation of this land, the principal oil development has been in Township Twenty, North, Range
110 Sixteen west, and was at the time of the withdrawal orders?

A. That was my understanding at the time I first became identified with these cases and I might add, that in numerous of the conferences in the Interior Department that I have been asked to attend, that in none of those have I ever heard any question regarding the other Townships, and the discussions in the Department have all been with reference to Township Twenty North of Range Sixteen West.

On Re-Cross Examination he said:

By Mr. Smith:

Q. Mr. Kidder, could not this withdrawal order have been expressed in two ways '14 to 15 Inclusive' or 14 to 16 and mean the same thing?

A. That would depend upon the interpretation of the description, to my mind there would be no occasion to make reference to Range 16, unless it was intended to include Range 16. You see a Range and Township involves a strip of land six miles wide, and he would scarcely say to a strip of land six miles wide, unless he intended to include that.

Q. Would be the eastern boundary?

A. That is true.

Q. Go to, that would be to the boundary?

A. You might put that interpretation upon it.

Q. Ordinarily if you said 1 to 10, would you include 10?

A. I think so.

Q. If you said 1 to 9 inclusive, would be the same as saying 1 to 10, would it not?

A. No, I think not, it doesn't seem the same to me.

Q. If the number of miles posts, the sixteen mile post, if you want to cover the distance from the starting point to the 16th mile post you have to go all the way, and you say from zero to 16, and if you say zero to 16, necessary would mean the same thing, would it not be from zero to 15, because in going from zero to 15 would not cover the 16th mile?

A. If I wanted to go to the 16th mile I would state from zero to 15, which would carry me to the 16th mile.

Q. To the beginning of the 16th mile?

111 A. Yes, sir.

Q. When you say fourteen to sixteen that carried you to the beginning of the 16th mile?

A. I would answer that question by saying the description of Ranges 14 to 16 West, is an abbreviated description stands for Ranges 14 and 16 the use of the words to acoids the use of the number 15, and in writing the description T. 20 N. R. 14 to 16 W., that is a description that calls for T. 20 N. R. 14, T. 20 N. R. 15 and T. 20 N. R. 16 W. There is no occasion to use the number 16 ordinarily in the description of the lands involved, unless it was intended to exclude that range.

Q. If I say from Smith's farm to Story's farm, would that include the Story farm?

A. Not necessarily.

Q. When you say 14 to 16, would necessarily include 16?

A. It might be interpreted perhaps when you say 14 to 16 to go only from the western boundary of Range Fourteen to the Eastern boundary of 16, in which case it would be better to say just Range 15, and not use the numbers that were not intended.

Q. To make that withdrawal order explicit to the ordinary man would have said 14 to 16 west, inclusive?

A. That would have been more correct and specific.

Q. Mr. Kidder, in your answers you have construed the correspondence along with the withdrawal order, as to your interpretation of it?

A. That is true.

Q. Standing by itself, it might be a different question?

A. Well, I would qualify my answer, by saying the interpretation of the General Land Office in interpreting descriptions there would be no doubt in my mind but what it was intended to include Range 16. That is the way that I would interpret it, but of course I note the absence of the specific term 'Inclusive' throws that doubt.

On re-direct examination he said:

By Mr. Hunter:

Q. You were asked whether or not a description reading from a certain point to another point, would include the last point mentioned, I will ask you to examine the withdrawal order of July 2nd, 1910, and state
112 whether or not it refers or uses the word 'From' in connection with the word 'to'?

A. No, sir, the term 'from' is not used.

L. L. CLEMENT, a witness for the Plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. Hunter:

Q. Mr. Clement, are you the Mr. Clement who testified in the case of the United States vs. Jeems Bayou Hunting and Fishing Club?

A. Yes, sir.

Q. Please state whether or not you are familiar with the tract of land involved in these consolidated suits, United States vs. Charles J. Greene, Jr., et al., and United States vs. W. H. Enders, et al?

A. Yes sir, I am familiar with the tract of land, known as Lots Two and Three of Section Twenty seven and Lots Five and six of Section line, Township Twenty North of Range Sixteen West.

Q. Have you been over those lands and made an examination of them?

A. Yes, sir.

Q. In your capacity as United States Engineer?

A. Yes, sir.

Q. What are the general charcteristics of the land involved in the suit of the United States vs C. J. Greene, Jr., et al, in Section Twenty seven, the land involved?

A. The land involved in this suit, being lots Two and Three of Section Twenty seven, is mostly of a very high character of rolling land, cut by deep ravines. The general slope of the land being North West towards Ferry Lake; near the 173.09 foot contour there is a very decided and steep bluff, from fifteen to twenty five feet high, bordering the lake shore with a small amount of comparatively flat land lying between the base of the bluff and the 173.09 foot contour. The land is all well timbered with the overcup

and willow oak in the flat land at the base of the
113 bluff and growing up on the high land is the post oak, black oak and up land hickory and pine. Part of the land has been in cultivation a number of years, and there is an old orchard on a portion of the land to the South of the C. J. Greene house, located on the line between sections Twenty three and Twenty seven. The lake, that is Ferry lake cannot be seen from any point on the Warren meander line forming the Southern boundary of lots Two and Three of Section Twenty seven. The Warren meander line does not follow the contour, does not conform to the sinuosities of the shore line of Ferry Lake—does not follow any water course whatever. It cuts across deep ravines, as far as nearly a quarter of a mile from the lake and in no way could be construed to represent the meander line of Ferry Lake.

Q. If it was intended as the meander line of Ferry Lake, what do you say in regard to its correctness?

A. I would say that it was absolutely incorrect.

Q. Is the error manifest?

A. Yes, sir.

Q. Is there anything on the ground itself, as far as you know that would have prevented Warren from running that line along the proper contour?

A. Absolutely none, in fact would have been easier to have run his line along the proper contour than to have cut across the high land through heavy timber and undergrowth, as along the contour or border he would have had more open running and easier running.

Q. So there is no reason that you know of, why he could not have run the line along the proper contour, mean high water elevation?

A. No, sir, no reason whatever that I can see.

Q. I will ask you to state whether or not there is a high bluff along the shore of Ferry Lake in front of the land in suit?

A. There is a high bluff very close to the shore of the and in suit.

Q. Warren's traverse did not follow that bluff?

A. No, sir, cut across, the bluff, far from the lake.

Q. So that the land in suit was omitted from the War-en survey?

A. Yes, sir.

Q. From your examination of the ground, what have you say whether or not that was land in place 14 in 1812 and 1839?

A. In my opinion there could be absolutely no oubt as to the fact that the land was in place, practi-ally as it is today at the time of the A. W. Warren sur-ey in 1839, and also in the year 1812—the land is of ie same character as that lying South of the Warren averse line, has the same character of timber and appar-ntly no difference whatever.

Q. Does the Warren traverse line through the frac-onal North West quarter of section Twenty seven, mark e banks or shore of any lake or body of water or other ream?

A. No, sir, it does not.

Q. Mr. Clement, did you have some pictures taken of is tract of land?

A. Yes, sir.

Q. Will you identify the photographs taken?

A. Photographs numbered, five, six, seven and eight re taken on or near the land included in this suit and resents the typical features of the land, and timber owth on Lots Two and Three of Section Twenty seven.

Q. The photographs that you have mentioned are some the photographs offered in evidence in the case of the ited States vs Jeems Bayou Hunting and Fishing Club?

A. Yes, sir.

Q. I will ask you to examine photograph number five and state whether or not it shows any of the land involved in this suit?

A. Yes, sir, it does, reading from the photograph, shows the high bank in front of the C. J. Greene, Jr., residence, which is located on the line between Sections Twenty three and Twenty seven. The notation on the back of the photograph gives the location of the camera and the direction it was pointing and makes mentioned of the features shown in the photograph.

Q. State whether or not the photograph No. 6 is a representation of the well and the timber in the neighborhood of the well?

A. Photograph No. 6, was taken from a point on the 173.09 foot contour near angle point No. 14, facing practically towards the Greene No. 5 Oil Company well, Amateur Oil Company—view No. 6 shows the timber of the vicinity of the well and the ground in that vicinity also shows the well and pump house.

Q. What does picture No. 7 represent?

115 A. Photograph Number seven, is another view of the ground, at Well No. 5, Amateur Oil Company, taken from a point to the South East of the well, showing similar conditions as indicated by picture No. 6, the large Post Oak timber and heavy timber growth in the vicinity of the well.

Q. Is that the well involved in this Greene suit?

A. Yes, sir.

Q. What does view No. 8 show?

A. View No. 8 is likewise a picture of well number 5, Amateur Oil Company, the well involved in this suit, taken from a point Southwest of the well, showing the character of the timber on the land in the vicinity of the well, the large post oak being shown.

Q. Were those pictures taken by Mr. J. D. Amble, a local photographer under your directions?

A. Yes, sir.

Q. Are they correct representations of the views shown?

A. Yes, they are.

Q. Mr. Clement, I call your attention to the illustrative profile shown on Supplemental plat No. 20 offered in evidence in the case of United States vs. C. J. Greene, Jr, et al, marked Plaintiff "F" and I will ask you to state what the profile purports to show?

A. This profile, Plaintiff "F" shows a cross section of the ground traversed between angle point No. 7 section Twenty seven and angle point No. 1, Section Twenty-eight. The profile shows the difference in the elevation of the ground level, between the said angle points bringing out clearly the great difference in elevation traversed by that line. The lowest points indicate the ravines, that are crossed and the highest points indicate the high land —there is a difference of practically forty feet in elevation shown along this line.

Q. Mr. Clement, I will ask you to calculate the length of the Warren so called meander line in section Twenty seven, from angle point No. 5 to the meander corner between fractional sections Twenty seven and twenty eight?

A. I can give it exact by referring to the field notes (witness examines field notes). Referring to Plaintiff's exhibit No. 15, page 29 in the suit of the United
116 States vs Jeems Bayou Hunting and Fishing Club, the record of the Warren survey, shows the length of Warren's traverse from angle point No. 5 to the meander corner of fractional Sections Twenty seven and Twenty eight is 4804.8 feet.

Q. What proportion of a mile is that?

A. 12-13th of a mile approximately.

Q. And the line is run at some distance from the lake and crosses high ground?

A. Yes, sir.

Q. Can you calculate and give the distance approximately around the line established by the Kidder survey, and which represents the mean high water elevation of Ferry Lake as it existed in 1812 and 1839—I desire to know in this connection the length of the line referred to established by Mr. Kidder in front of sections Twenty three and Twenty seven.

A. Referring to Plaintiff's Exhibit No. 17, offered in evidence in the suit of the United States vs Jeems Bayou Hunting and Fishing Club, the length of the meander line of Ferry Lake in sections Twenty three and Twenty seven from angle point No. 9 in section Twenty seven, front of sections Twenty seven and Twenty three, thence through section Twenty seven to the meander corner of fractional Section Twenty seven and Twenty eight, on the 173.09 foot contour, is 6311.38 feet distance.

Q. What does that distance stand for in the terms of miles or fraction of miles?

A. Approximately 1 1-5 miles.

On Cross Examination he said:—

By Mr. Smith:—

Q. Mr. Clement, this profile map, Plaintiff "F", I will ask you if the so called omitted area of section Twenty seven, is not very broken land, with big ravines in it?

A. Yes, there are deep ravines in it.

Q. When the lake reaches 180 feet, I will ask you, if these ravines would not be filled with lake water?

A. If the lake were filled to 180 feet level, there is only two ravines in which water might possible have been

117 seen from the Warren traverse line. The intersection of the 180 foot level on the other ravine is far distant from the Warren meander line.

Q. I will ask you, if you ran the contour of these ravines, so as to tell exactly how deep they were?

A. The coutours of the land in Sections Twenty three and Twenty seven were run by Mr. Kidder.

Q. Again showing you illustrative profile, on the Exhibit referred to, I will ask you, if you have not two high peaks and two depressions?

A. Yes, sir.

Q. One below the 180 foot contour and the other at the 184 foot contour?

A. Yes, sir.

Q. I will ask you, for agricultural purposes, would not that land be practically worthless?

A. No, sir, the illustrative profile is on an exact scale, shows that it does not show the extent in the area of the high land or ravine, but there is considerable amount of high land already in cultivation, and a considerable more that is equally susceptible of cultivation. The ravines cutting through this land are quite deep, with quite precipitious banks, which drains the land, but don't cut into enough of the area to materially render the land unfit for cultivation. There are portions of the steep banks leading to Ferry Lake from the top of this plateau that is too steep for cultivation, I would think.

Q. Mr. Clement, you are familiar with the Warren survey?

A. Yes, sir.

Q. Have you examined it?

A. Yes, sir.

Q. Do you know of any reservation, or restrictions showing any of this omitted land was reserved to the Government?

A. No, sir, not any recorded in the field notes.

Q. None of Sections Twenty seven, Nine or Ten?

A. No reservation made.

Q. No restriction showing the omitted land was in the ownership of the Government?

A. He does not mention this land whatever, he mentions the traverse in front of Section Ten and
118 the traverse in front of section Twenty seven.

Q. Showing you Plaintiff's Exhibit "D" I will ask you to read from it, you notice that it says T. 17, T. Lo, all of that Township, that is a very complete description.

A. Yes, sir.

Q. Then T. 18 N, R. 14 to 14 West the words 'all of the ranges not being found there in, that is no complete description, the words 'all of Ranges' not found therein, is not that significant to your mind?

A. In what way.

Q. That the withdrawal was to go to range 16 West?

A. No, sir.

Q. But in your work when you go to a point, you want to stop, why don't you use the word 'to' if you want to go beyond you add 'inclusive'?

A. That is the general practice to make it more explicit.

Q. If you said from Smith's farm to Story's farm, you would stop when you got to Story's farm?

A. I would think so.

Q. If you wanted to include the Story farm you would use the word 'inclusive'?

A. If I had anything to do with it, I would possibly do that personally?

On Re-Direct Examination he said:—

By Mr. Hunter:—

Q. You find in the language of the withdrawal order "D" calling for all Townships, from one Township to another, is the word 'from' used?

A. No, the word 'from' is not used in the withdrawal order.

Q. There is no language in the order is there showing an intention to withdraw according to any description like Counsel suggest to you from one Township to another Township?

A. I would have to take it to include the Township 20 N. Range 16 West the way the order reads.

Q. You would read the order as a whole and construe it in reference to the whole and not construe it in reference to any particular part, but would construe it as a whole?

119

A. Yes, sir.

Q. And according to your interpretation it includes Township Twenty, North of Range Sixteen West?

A. Yes, sir.

On Cross Examination he said:—

By Mr. Smith:—

Q. When it reads Ranges 14 to 16 west, that would be a general description, would it not, would not be what you call a specific description, including 16?

A. I would think that it included R. 16. Of course it would be more specific if the word 'inclusive' was used.

Q. I will ask you to look at the second sheet of this Exhibit "D", and state if the Government does not pretend to particularly describe the withdrawals, is not the language used 'particularly described as follows to-wit—

that is the ending of the sentence begun on the first page, which sentence I will read 'all of those certain lands of the United States set forth and particularly described as follows; to-wit:—Now in view of the fact that this particular description was intended to be specific, you think that would possibly include Range Sixteen using the word 'to 16 West?

A. Yes, sir, I think if they specially meant to go only to the Eastern boundary of Range Sixteen the withdrawal order would have read Township 18, Ranges 14 & 15 west.

Q. Could it not have been arrived at by saying "14 to 15 inclusive"?

A. Yes, sir.

Q. Could not be expressed 14 to 16?

A. I would not think so. I cannot see why they would bring in Range 16, if they did not intend to include it in the withdrawal order.

Q. Don't you usually describe from the Eastern line to the Western line?

A. Yes, sir.

Q. That means that you go to the line?

A. Yes sir, all in the same range.

Q. I will ask you, if that is in your opinion
120 an indefinite and ambiguous description if it intended to include Range Sixteen West?

A. I would not call it an indefinite or ambiguous description, as I said before it could have been clearer prehaps if the word 'inclusive' had been used, but to my mind I would say that Range Sixteen was certainly included.

Q. If you were writing that order, you would have used the word 'inclusive'?

A. I undoubtedly would.

On Re-Direct Examination he said:—

Q. Mr. Clement, calling your attention to the first withdrawal order of December 15th 1908, I will ask you to look at the description, especially the word 'in' in connection with the description and state whether or not, in your opinion it includes these Townships?

A. The description reads 'the public lands in Townships 15 to 23 North and Ranges 10 to 16 West, Louisiana meridian' I would say that description included all of the lands in Townships 15, 16, 17, 18, 19, 20, 21, 22 and 23 North of Ranges 10, 11, 12, 13, 14, 15 and 16 West.

Q. Now referring Mr. Clement to the other suit that we are now trying, the suit of the United States vs W. H. Enders et al, I will ask you to state whether or not you examined the land involved in that suit, being Lots five and six of Section Nine?

A. Yes sir, very carefully.

Q. You have already testified in detail, in regard to the errors committed by A. W. Warren in the so called meander line in Section Ten, have you not?

A. Yes, sir.

Q. Is that the meander line, which excludes from his survey these lands and other lands of Section Nine, Ten, fifteen and sixteen?

A. Yes, sir. The land in sections Nine, Ten, fifteen and sixteen is one solid body of land, excluded from the Warren survey.

Q. That is shown on the Supplemental plat of Township Twenty offered in evidence in this case and
121 marked Plaintiff's exhibit "F"?

A. Yes, sir.

Q. Mr. Clement, have you been on lots five and six of Section Nine?

A. Yes, sir.

Q. And made an examination of those lots?

A. Yes, sir.

Q. What are the charcteristics of the land involved in this suit?

A. The land in lots five and six has a gentle slope, the land is high in character, mostly covered with a heavy timber growth, except in the vicinity of the Jeems Bayou Hunting and Fishing Club house, where there is a considerable area in cultivation.

Q. Is the Club house situated on one of these lots?

A. The Club house is situated on Lot Six of Section Nine. There are no decided ravines on this land. The higher portion above the 185 foot contour is practically level, all gently sloping towards the South West; below the 185 foot contour there is a more decided slope towards the South and South West to James Bayou and Ferry Lake.

Q. Referring to the Supplemental Topographic plat Plaintiff "G" offered in evidence in this case, I will ask you to state how much of the area involved in this suit lies above the 185 foot contour approximately.

A. I would estimate about one-third.

Q. How much lies above the 180 foot contour?

A. I would estimate about 9-10ths is above the 180 foot contour.

Q. State whether all of the land involved in this suit is above the 173.09 foot contour?

A. Yes, sir, it is all above the 173.09 foot contour.

Q. It is high land, up land in character?

A. Yes, sir.

Q. Referring to the Warren so called meander line in Section Ten you have already testified in the case of the United States vs. Jeems Bayou Hunting and Fishing Club, if that line was intended to represent the bank of Ferry Lake, the mean high water elevation of Ferry Lake, if he committed a manifest error?

A. I have so testified.

Q. Are you also familiar with the Bristol line
122 from the point "A" to the point "C" on the re-survey plat offered in evidence in the case of the United States vs the Jeems Bayou Hunting and Fishing Club, which is marked Plaintiff's Exhibit 8?

A. Yes, sir.

Q. You have already testified in the Jeems Bayou Hunting and Fishing Club case, in regard to that line have you not?

A. I believe that I did testify about it.

Q. Referring to the Bristol line from the point "A" to the point "C" I will ask you to state, if that was intended to represent the conformation of the shore or sinuosities of the shore, or mean high water elevation of Ferry Lake, whether it was manifest error, in your opinion as a Surveyor?

A. Yes, sir, it was manifest error, if it was intended to represent the shore of any body of water or stream.

Q. I will ask you to state whether the Warren or the Bristol line, about which I have questioned you, follows the border of Ferry Lake?

A. They do not follow the border of any body of water.

Q. Do they parallel the lake?

A. No, sir.

Q. Do they represent the sinuosities of the lake shore, or conform to the shore?

A. No, sir.

Q. Are they or not run without reference to the contour?

A. Absolutely without reference to any contour.

Q. Mr. Clement, state whether or not any photographs were taken of the land in controversy in the Enders case, under your directions?

A. Photographs numbered 21, 23, 24, 25 and 26 were taken by Mr. Dambly a local Photographer under my personal directions.

Q. I will show you photograph No. 21 and will ask you to state whether or not that represents the Club house of the Jeems Bayou Hunting and Fishing Club, situated on the land in controversy?

A. Yes, sir, Photograph No. 21 shows the Club house, the character and height of the land and the timber in the vicinity of the Club house in Lot six, Section Nine,
123 with the camera on the meander corner of fractional Sections Nine and Thirteen on the 173.09 foot contour, facing towards the Club house.

Q. Examine photograph No. 23 and state what it represents?

A. Photograph No. 23, shows the location of the oil well, Club house No. 3, Etchinson Drilling Company. The well has been abandoned and derrick destroyed. This however shows the location of the well and the large timber in the immediate vicinity.

Q. You know the location of that well?

A. Yes, sir.

Q. Do you know whether or not it is situated on the high land?

A. It is above the 185 foot contour.

Q. Pretty high land?

A. Yes sir, high land.

Q. Examine photograph No. 24 and state what it represents?

A. Photograph No. 24 was taken at angle point No. 12 on the Bristol meander line in Section Nine, facing Westerly along the Bristol meander line showing the character of the land on both sides of the so called meander line, and no evidence of any bank, and showing the same character of timber on both sides. In the picture there

are shown two men, one standing on each side of the meander line in order to more definitely locate the meander line.

Q. Who are the men shown?

A. D. R. Thompson, Mineral Inspector from the General Land Office and myself.

Q. On which side of the line are you standing?

A. I am standing on the land included in the Bristol survey and Mr. Thompson is standing on the land excluded by the Bristol survey and included by the Kidder survey.

Q. Are you the person represented in the picture with a tablet?

A. Yes, sir.

Q. That is a note book?

A. Yes sir, keeping a record of the pictures.

Q. Now examine Photograph No. 25 and state what that represents?

A. Photograph No. 25, was taken at the same locality as Photograph No. 24, at angle point No. 12 on the Bristol meander line facing North East along the Bristol meander line, showing the character of the land and the timber on the land included and excluded from the Bris-
124 tol survey. Mr. Thompson, Mineral Inspector is standing on the land excluded by Bristol and I am standing on the land included in the Bristol survey.

Q. Examine Photograph No. 26 and state what that represents?

A. Photograph No. 26, was taken at angle point No. 10 on the Bristol survey, facing Easterly along the Bristol survey, showing the character of land and timber in the vicinity and the absence of any banks along the meander line.

Q. Who are the persons represented in Photograph No. 26?

A. Mr. Thompson, United States Mineral Inspector on the left and myself on the right holding a note book in my hand. Mr. Thompson is on the land included by the Bristol survey and I am standing on the land excluded by the Bristol meander line, the meander line passing between us.

Q. Have you indicated on any plat the point from which the pictures were taken, if so on what plat?

A. On plat marked Plaintiff "I" the picture points are shown in red ink, and the location of the camera noted with a small circle with an arrow pointing in the direction at which the camera was facing.

Q. Referring again to the case of the United States vs C. J. Greene Jr, et al, I will ask you to state whether or not, well number 5 of the Amateur Oil Company, is shown on the supplemental topographical plat offered in evidence and marked exhibit "I"?

A. Yes sir, the plat mentioned shows that Greene 5, Amateur Oil Company well is located on Lot Three of Section Twenty seven, between the 185 and the 190 foot contour.

On Cross Examination he said:—

By Mr. Smith:—

Q. Mr. Clement in taking a picture showing the relative size of the trees, a good deal depends upon how far the camera is from the trees, if up close it gives a very much larger appearance?

A. Yes, sir.

Q. You have not specified the distance at which these pictures were taken?

A. The pictures were not taken at any particular distance, but in all of the pictures, you will find
125 either Mr. Thompson or myself standing along by the side of trees, so a comparison can be made in that way.

Q. But it would not be accurate measurement of the tree, because it would be at a different distance,, in other words owing to the distance the camera was from the tree, that would make a person or tree look larger or smaller owing to the distance?

A. Yes, that is true, of course it is relatively a comparison, between the different trees.

DR. HENRY C. COWLES, a witness for the plaintiff being first duly sworn, testified as follows:—

On Direct Examination he said:—

By Mr. Hunter:—

Q. Doctor, you are the Dr. Henry C. Cowles, who testified in the case of the United States vs Jeems Bayou Hunting and Fishing Club No. 1157, on the docket of this Court?

A. Yes, sir.

Q. We are now engaged in the trial of two cases, being consolidated being the case of the United States vs Charles J. Greene Jr. et al, No. 1155 and United States vs W. H. Enders No. 1160, I will ask you to state whether or not you examined the land involved in these suits?

A. Yes, sir, I did. The land involved in the C. J. Greene, Jr., suit No. 1155 was investigated carefully on December 10th, 1917, and the land involved in the W. H. Enders suit No. 1160 was visited first on December 12th and some portions on December 13th, 1917, and I also visited this for the third time on April 26th, 1918, that is the Enders property, or property involved in the Enders suit.

Q. You are an Ecologist?

A. Yes, sir.

Q. Professor of Ecology in the University of Chicago?

A. Yes, sir.

Q. State what was your purpose in making the examination of these areas?

A. To see from the character of the timber growth and general condition of the growth, what the character of the land was in 1812 and 1839.

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Q. Did you make that examination at the request of the Department of Justice?

A. Yes, sir.

Q. Please refer to the land involved in the suit of the United States vs C. J. Greene Jr, Lots Two and Three of Section Twenty seven and state the result of your examination, with particular reference to it and the count of trees that you made there, in that investigation?

A. I began my studies in this case at what I was told was the Greene cottage, that is on the line between Sections Twenty three and Twenty seven, very near the border of Ferry Lake, and from that point I walked along the 173.09 foot contour for some distance coming eventually to Green number Five well, and there I made some special studies of trees and ring counts and so on, and then after that I returned along the Warren line back to the point or near the point I started.

Q. Did you make a thorough examination of the tract?

A. Yes, sir, I went practically around the tract, also to some extent traversed it at various points.

Q. What is the character of the timber growth on the land?

A. This was extremely high land, reaching in some places twenty five, thirty five or more feet above Ferry Lake and was covered pretty generally by up land timber Post oak predominating, with pine and up land hickory. There are also some lower places, ravines in it, and on these there is overcup oak, willow oak, red gum and I find

that same timber also along the lower slopes near the lake above the 173.09, while below that line I find mostly cypress and some little birch willows.

Q. What have you to say with reference to the ages of the trees that you found, did you make any age counts?

A. Yes, sir, in the neighborhood of the well, a number of trees had been cut.

Q. Near the Green number Five?

A. Yes sir, Green No. 5 well, the well involved in this suit, a number of trees had been cut, giving me an opportunity to make ring counts. At this place a
127 post oak near the well and a little above it was found to be probably in the neighborhood of Two hundred years of age when cut. It was impossible to determine the age exactly because the heart was gone. I counted one hundred and seventy rings and estimated at least thirty more— then I found trees very close to the well standing and I estimated by comparing with other trees in the neighborhood of one hundred and one hundred and fifty years old. A small post oak below the well level eighteen inches in diameter was ninety one years, and a slightly smaller one only a foot in diameter below the well level that had been cut, and I estimated its age to be over one hundred and forty years. In this tree the heart had disappeared, and its diameter was twelve and a half inches. Near by is a standing tree thirty inches in diameter and I estimate it has an age of two hundred and fifty years or more. Another tree standing twenty six inches in diameter, I estimated its age to be one hundred and seventy five years. All of these post oak are in the neighborhood of the well, some above and some below.

Q. What have you to say with reference to the characteristics of the post oak tree, as to whether or not they will tolerate water?

A. They will not germinate in water and will not tolerate water except for a few days.

Q. The post oak is an up land tree?

A. Yes, sir, decidedly.

Q. In addition to the age count of the trees that you made, I will ask you if you examined the tree growth generally on the land?

A. Yes, sir.

Q. Of what kind of land was the tree growth typical of?

A. The tree growth is typical of land that is not subject to submergence, with the exception of the places near the lake, and up one or two ravines.

Q. You have already stated, have you not, that in the trial of the case of the United States vs Jeems Bayou Fishing and Hunting Club, that in your opinion, the mean high water elevation of Ferry Lake in 1812 and 1839 was at the 173.09 foot contour, as established by Mr. Kidder?

A. Yes, sir, I so stated.

Q. Now what have you to say, with reference
128 to the land involved in the case of the United States vs Charles J. Greene Jr. et al, whether or not it was a part of the bed of Ferry Lake in 1812 or 1839?

A. No, sir, it was not.

Q. In your opinion, as an Ecologist, did that land exist in place in 1812 and 1839, substantially the same as it exists today?

A. Yes, sir.

Q. Were you shown by any person, if so by whom, the so called Warren line through the fractional Section Twenty seven and Twenty three?

A. Yes, sir, I followed that in company with Mr. Kidder.

Q. Supervisor of Surveys?

A. Yes, sir.

Q. What have you to say in regard to the correctness or incorrectness?

A. It is manifestly incorrect, as it went off away from the bank of Ferry Lake, traveled over a very high country, some places thirty five feet above the lake, and at other places would go down across ravines and up again on the other side, and showed an absolute failure to follow any typographical contour, and the vegetation, the post oak on the high land, and the willow oaks in the ravines.

Q. Was the line run entirely without reference to the contour?

A. It was run entirely without reference to the contour.

Q. Are the any topographical conditions on the ground that in your opinion as an Ecologist, that justified the running of that line in the position and direction in which it was run?

A. None whatever.

Q. Is there anything in the timber growth to justify the running of that line?

A. No, sir.

Q. What have you to say with reference to A. W. Warren surveyor having erred in running the line in the position and at the elevation it was run?

A. He certainly erred if it was supposed to be a meander line of Ferry Lake.

Q. If he represented it as a meander line would you say that he committed a manifest error?

A. Yes, sir.

129 On Cross Examination he said:—

By Mr. Smith:—

Q. Doctor, when you were making your examination and observations in Section Nine, Ten, and Twenty seven, was it in the winter time or in the Summer time?

A. In Sections Twenty seven I made it in the Winter time, in Sections Nine and Ten, Winter and Spring.

Q. When you went there in the Winter, the trees were dead, and all trees are more difficult to interpret, the character of the trees, and didn't you have to resort to cross sections to find out what they are?

A. That is hard to answer that it is more difficult, in some respects it is but in other respects it is easier because you can see further through the forest.

Q. Is it not a fact that in your science of Ecology that you tell a tree by the foliage and the bark of the trees?

A. Usually more by the bark.

Q. Now I will ask you if the bark is not rather an uncertain way?

A. Not in most trees.

Q. But if in doubt you go into the labratory and take a cross section of the wood?

A. Yes, sir, but it is not often that that has to be done.

Q. Are you familiar with these trees here in Shreveport and in the South, as to the character of up land and low land trees?

A. Yes sir, and have been for a good many years.

Q. Without having a labratory test?

A. Yes, sir.

On Re-direct Examination he said:—

By Mr. Hunter:—

Q. Referring to the other suit which we are now trying, that is the case of the United States vs W. H. Enders et al No. 1160 I will ask you to state whether or not you examined the area involved in that suit, lots Five and six of Section Nine?

A. Yes, sir.

Q. When was that examination made?

A. That examination was made, the first examination, that is on this trip. I have often been on the area on previous trips, but not in connection with this case. I visited them the first time in December, December
130 12th, 1917, and again the following day and the third time on April 26th, 1918.

Q. Had you previously examined the land?

A. Yes, sir, in February 1914.

Q. Are you familiar with the tract in a general way?

A. Yes, sir.

Q. What are the characteristics of that tract of land, with respect to the timber growth?

A. The land very generally is high land, with up land timber, post oak, black jack oak, pine predominating.

Q. Have you visited the well site involved in this case the Club House No. 3?

A. Yes, sir, a little North East of the Club House.

Q. Are there any trees growing near that well?

A. Yes, sir, one of the characteristics of up land timber, in the very highest position of the tract, indicating black jack oak in addition to the post oak.

Q. Did you have an opportunity to make any age counts on this land?

A. No, sir, not in that vicinity, and I made in that neighborhood only a general study. I noticed a good many trees of a size indicating an age of one hundred and fifty years or more.

Q. A good deal of that land is very high?

A. Yes, sir, especially in the neighborhood of the wells.

Q. You remember the site of the club house of the Jeems Bayou Fishing and Hunting Club?

A. Yes, sir been there several times.

Q. Are there any trees on that site?

A. Most of the land there has been denuded of the trees, and is subject to cultivation. There are some trees

remaining especially West of the Club house, near the lake, but the most of the timber has been cut in proximity to the Club House.

Q. What is the timber growth on this tract of land typical of?

A. It is typical of high land, except that timber close to the lake shore, near the 173.09 contour, to the West.

Q. Taking the area as a whole involved in this suit, what do you say in regard to the timber growth?

A. The area as a whole, is of a very high land character, and is up land.

Q. Was it or not in your opinion, as an Eco-
131 logist land in place in 1812?

A. Yes, sir, it was land in place in 1812, also in 1839.

Q. Also in 1839?

A. Yes, sir.

Q. Land well drained?

A. Very well drained.

Q. Referring to resurvey plat of Township Twenty offered in evidence in the suit of the United States vs Jeems Bayou Fishing and Hunting Club, marked Plaintiff's Exhibit 8, I will ask you to state whether or not you have followed the so called Bristol meander line indicated on that plat by the letters "A" to "B" and "C"?

A. Yes, sir, I have followed that two separate times.

Q. What have you to say in regard to the timber growth along that line, on both sides of it?

A. It is the same on both sides, but between the letters "A" and "B" the timber has been cut, but very soon you come into the uncut timber and it is the same on each side of the line, the timber being post oak, black jack oak, and is the same on both sides.

Q. I will ask you to state whether or not the line marks the banks of any lake, stream or water course?

A. No, sir.

Q. Would you say that there was post oak, black jack and pine trees all along the line?

A. Yes, sir, on both sides.

Q. Are those trees characteristic of up land?

A. Yes, sir.

Q. If that line was intended to represent the border, or contour what is your opinion with reference to whether it is correct or incorrect?

A. It is incorrect.

Q. Was the error apparent?

A. Yes, sir very apparent.

Q. Now have you seen the line between Lots Five and Six of Section nine and Lots eight and nine of Section Ten?

A. Yes, sir.

Q. In a general way is there any difference between the character of the land on both sides?

A. It is quite the same on both sides, almost
132 entirely up land, with up land timber, excepting the extreme South end of the line.

Q. Lots five and six of Section Nine, forms a part of a large area of land omitted from the Warren survey, do they not?

A. Yes, sir.

Q. You are familiar with the entire area omitted?

A. Yes, sir, been over it quite a good deal.

Q. I will ask you to state, in your opinion as an Ecologist whether all of the lands embraced in Lots eight, nine and Ten of Section Ten, and the lots in sections Nine, fifteen and sixteen, and the area involved in these present suits were all land in place in 1812 and 1839?

A. Yes, sir, they were.

Q. Were they then, in your opinion as an Ecologist substantially in the same condition that they are to-day?
A. Yes, sir.

No Cross Examination.

LIONEL L. JANES, a witness for the Plaintiff, being first duly sworn, testified as follows:—

On Direct Examination he said:—

By Mr. Hunter:—
Q. Mr. Janes, are you an Ecologist?
A. Yes, sir.
Q. Are you the same Lionel L. Janes, who testified in the case of the United States vs Jeems Bayou Fishing and Hunting Club?
A. Yes, sir.
Q. We are engaged in the trial of the case of the United States vs Charles J. Greene Jr. et al, involving the land in Section Twenty seven, and the case of the United States vs W. H. Enders, involving lots five and six of section Nine. I will ask you to state whether or not you are familiar with those tracts of land?
A. Yes, sir, I am.
Q. When did you first become familiar with them?
A. Late in the year 1913 and in the early part of 1914.
Q. During the years 1913-1914, do you remember having visited these particular tracts of land?
A. Yes, sir, I visited them a number of times.

133 Q. Your purpose at that time was to ascertain whether Ferry Lake existed in 1812 and to determine the mean high water elevation?

A. Yes, sir, those two things were a part of the questions at issue and also I visited those tracts for many other purposes, which all fit into the general probe as to Ferry Lake, when it came into existence, and whether it existed in 1812 and 1839 and where the mean high water mark was at at those dates.

Q. Did you find the mean high water mark, from your investigations made in 1913-1914 to be at the position shown by Mr. Kidder's survey as 173.09?

A. Yes, sir.

Q. State whether or not subsequent to the time 1913-1914 to which you have referred if you visited these tracts for the purpose of making an Ecologic investigation?

A. Yes, sir, since then for that purpose.

Q. When did you make your subsequent visit?

A. I visited lots five and six of section Nine Township Twenty North of Range Sixteen West, December 12th 1917; I visited lots two and three of Section Twenty seven on December 14th, 1917.

Q. Please state in a general way the result of your examination with regard to the land involved in the suit of the United States vs C. J. Greene Jr. et al, in Section Twenty seven.

A. The land involved in that suit is up land in character, it is high, dry and well drained and forms a part of a peninsular projecting North from the area South on the lake side with perpendicular bluffs a short distance from the lake, and of an up land character, which is not dissimilar to up land and high land in various other parts of the Township, and a great area of other land in the vicinity that is dry and well drained up land.

Q. How does the land in suit compare in general character of timber growth, soil and other features with the land that Warren included in his survey in that section?

A. It is practically of the same character of the land which he included in his survey. A portion of this area involved has been cut over and cleared for farming purposes, notably lot two of Section Twenty seven, and from the indications lot two at one time was heavily forested with a species peculiarly up land in character,
134 being post oak, pine, black jack oak. Lot three of section Twenty seven is still forested with up land timber prevailing, consisting of post oak, black jack some up land hickory. The post oak compare favorably with the post oak on the adjacent up lands, compare favorably in size and age. The post oaks in this locality are usually comparatively old, when they reach a diameter of twenty to thirty inches. There are many such trees on this tract and the tracts adjacent to it on the South; the average rate of growth is about seven rings to the inch.

Q. Did you make any age counts on this tract?

A. Yes, sir, I did.

Q. State the result of your age counts?

A. I examined a post oak stump, which is situated South 190 feet from the Greene well No. 5, with a diameter inside of the bark of fifteen and a half inches and outside of the bark, seventeen and 7-100 inches, the stump being twenty four inches high, and the age when cut was ninety one years. The tree had been cut at least one year. The elevation of this stump was about 187 feet; Another post oak with a diameter, inside of the bark of twenty one inches, and outside of the bark twenty three inches, the stump being 28 inches in height, and it was 160 years old when cut. This tree had been cut at least one year. This tree was three hundred feet South of the Greene well number Five. I made quite a number of age counts of post oak stumps adjacent to this area on up land but I have not the data here, but the rate of growth was prac-

tically the same on lots Two and three as on the land adjacent up land to the South, and there are quite a large number of post oak in and about the location of the Greene well number Five varying in diameter from twenty to thirty inches, and are in age from one hundred and fifty to two hundred and twenty five years or more.

Q. State whether or not there are post oak and other trees growing on this land, which antedate 1812?

A. Yes, sir, there are a good many.

Q. What is your opinion with respect to whether or not this land was land in place in 1812, and 1839?

A. Yes, sir, it was land in place in 1812 and 1839 and a long time prior to that date.

Q. Is there any doubt whatever about that
135 fact?

A. No, sir.

Q. Now referring to the so called Warren meander line in section Twenty three and Section Twenty seven, I will ask you to state whether or not you were shown, or have examined that meander line?

A. Yes, sir, I traveled that line with Mr. A. D. Kidder, Supervisor of Surveys, on one, two or three occasions.

Q. What do you say in regard to its correctness or incorrectness?

A. The line is manifestly incorrect, in as much as it attempts to delineate or mark the true border of Ferry Lake.

Q. Is it run according to the contour of Ferry Lake?

A. No, sir.

Q. Does it mark the conformation or the sinuosities of a body of water?

A. It does not.

Q. Is it or not run without regard or reference to the contour?

A. It was run with reference to no contour whatever.

Q. Now referring to the area involved in the case of the United vs W. H. Enders et al, being Lots five and six of Section Nine, state whether or not you are familiar with that land?

A. Yes, sir, I am.

Q. Did you gain a familiarity with it in 1913-1914?

A. Yes, sir.

Q. And subsequent thereto, did you visit the land for the purpose of making an Ecologic investigation?

A. Yes, sir, I visited the area on December 12th, 1917, with Mr. A. D. Kidder, Supervisor of Surveys of the General Land Office.

Q. Did he point out the lines to you?

A. Yes sir, he pointed them practically all out, a large number of the meander corners on the 173.09 foot contour and a good many others.

Q. Referring again to the area involved in the suit of the United States vs C. J. Greene Jr. et al, did Mr. Kidder point out the lines to you in that case, and identify the lines for you?

A. Yes, sir.

Q. Now what are the timber characteristics and topographic features of lots Five and Six of Section
135½ nine, involved in the suit of the United States vs W. H. Enders et al?

A. The land in those two lots is up land, naturally well drained high, and a considerable part of it a sort of a plateau, comparatively level. The western portion of the tract has more or less of a slope, extending down to the shore of Ferry Lake, and between the 180 foot contour and the 173.09 foot contour there is a forest of overcup oak, willow oak, red gum trees of large size and great age. Below the 173.09 foot contour there is some cypress trees growing, in the cypress belt below the 173.09 foot contour which have germinated since Ferry Lake came

into existence; above the 180 foot contour, there is a large number of post oak trees of large size, some black jack trees, and some pine. I will say in this connection that black jack oak normally never grows large, the tree usually is small tree, scarcely ever reach a large size, and in observing a black jack forest and the amount of comparatively small size trees, you would think they were comparative young, but it is the reverse the forest is apparently old. The black jack tree is a tree that reaches maturity in less time than a post oak, and never reaches the size of the post oak. It is a tree that normally grows only on a dry site, where the land is dry for a considerable part of the year. For instance we have black jack oak on the tops of the Ozarks mountains and on the sides where the soil is thin and poor, and mostly on the West and South slopes where it is extremely hot and dry in the summer time.

Q. You say that the black jacks do not grow to great size?

A. No, sir, they do not.

Q. Do they grow to a great age?

A. They grow to a great age, but the age rings are close together.

Q. Now what does the presence of cypress trees below the 173.09 foot contour, and the presence of the willow oak, over cup oak and other trees that you have mentioned above the 173.09 foot contour prove, from the point of view of an Ecologist?

A. It proves the mean high water mark of Ferry Lake during the raft period was at the juncture of the cypress and the overcup, at the 173.09 foot contour where Mr. Kidder placed it.

Q. You believe that that contour correctly de-
136 lineates the mean high water elevation of Ferry Lake, as it existed in 1812 and 1839?

A. Yes, sir.

Q. Did you make any age counts of trees on this tract of land.

A. No, sir, I think not, though I did on the area adjacent to this on the east, I think that I give testimony relative thereto in the Jeems Bayou case.

Q. Are you familiar with the site of the Club House of the Jeems Bayou Fishing and Hunting Club?

A. Yes, sir, I have been there several times.

Q. Is there any portion of the land, in the neighborhood of the Club house in cultivation?

A. Yes, sir, there is a field close by.

Q. State whether or not any timber in that portion of the land has been cut, or most of it?

A. Yes, sir, the timber in the field has been cut down, cleared away.

Q. What have you to say regarding the age of the land involved in this suit, as to whether it existed in place in 1812 and 1839 or not?

A. Yes, sir, this land was in place in 1812 and 1839, and for many ages previous to those dates, as part of the up land, which is adjacent to it on the east, which has always been in place for a remote period of time.

Q. Is there any question whatever about that fact?

A. No, sir.

Q. Are you familiar with the Bristol meander line shown on the resurvey plat marked Plaintiff 8 offered in Evidence in the case of the United States vs. Jeems Bayou Fishing and Hunting Club which line is indicated by the letters "A" "B" and "C?"

A. Yes, sir.

Q. What do you say in regard to that line, if it was intended to represent a meander line of the lake?

A. The line referred to by Counsel, does not delineate the sinuosities of the border of any lake or stream, or

any body of water, on the other hand the line crosses up land, the land having practically the same elevation on both sides of the line.

Q. Through up land?

137 A. Through up land throughout nearly the entire extent, and being on very high land, covered with up land forest, Pine, Post oak and in most cases impossible to see Frerry Lake from any point of the line extending from near Point "A", which was practically at the lake.

Q. Does that line depart from the lake practically at right angles?

A. Yes, sir.

Q. If intended to represent the shore or conformation of the lake is it correct or incorrect?

A. Incorrect.

Q. Is it manifestly incorrect or not?

A. Yes, sir.

Q. You have already testified in the case of the United States vs. Jeems Bayou Fishing and Hunting Club relative to the Bristol meander line and Warren meander line in Section Ten, I will ask you however to state whether or not, said line follows the border of Ferry Lake and is a correct meander line of Ferry Lake?

A. No, sir, neither one follows the contour of Ferry Lake, nor either one is a correct meander line.

On Cross examination he said:

By Mr. Smith:

Q. Mr. Janes, referring to Black jack, you find that on an elevation above 185 feet?

A. It is very common at 185 feet and above and they come down to the 180 foot contour in a great many places,

but it is the high dry land where the black jacks are common.

Q. You find comparatively few between the 180 foot and the 185 foot contour?

A. In most cases, I remember there were some, through the center of that high land.

Q. I am asking you if you find them between the 180 and 185 foot contour, and if you did if they were not of comparatively recent growth?

A. Well they averaged about the same since and seemed to be the same age as those higher up.

138 Q. What would you say as to their ages?

A. From seventy-five to one hundred and fifty years old.

Q. So that from their presence you could not tell anything about what it was in 1839, when Warren was in there, as indicating the water level?

A. Yes, sir, they are proof that the water was not up about the base of those trees. They do not stand any overflow to amount to anything. Of course, if sometime during high water, it might come up and cover the ground about the base of the tree and then run away it would not hurt them?

Q. But if they were only seventy-five years of age, you could not from the evidence of those trees tell about the conditions of 1812 and 1839?

A. They are from seventy-five to one hundred and fifty years old.

Q. But I am speaking about those between the 180 and the 185 foot contour?

A. Yes, sir, I am speaking of those.

Q. Have you ever taken any accurate tests as to the amount of water they will stand? Do you know whether they will stand one week, two weeks or three weeks of overflow?

A. I never have. I studies a great many years in the Mississippi Valley, the land adjacent to the flood plains of Mississippi and I have never found any black jack oak able to stand overflow. They grow above the flood plain and overflow.

Q. But you never measured the time as to how long they would stand an overflow?

A. I have never found any that would stand any overflow to amount to anything. I have frequently searched for Black Jack oak on overflowed land, or on land that occasionally overflowed and I never could find any.

Q. How would you reconcile those conditions with the fact that these lands did go under in 1882, was overflowed?

A. Well, I think there are occasions that overflows could come up and go out immediate.

Q. Now you heard the evidence that the water gradually recedes, do would still think that you would find black jacks on the land notwithstanding the fact
139 that the overflowed covered all of this land in 1892?

A. I do not recall the evidence relating to the overflow, but I think that any overflow of any area above the 180 foot contour was very temporary, and the water would come up and immediately recede, was not on the tract for many days.

Q. But you cannot say specifically say what length of time it would stand overflow conditions, that is black jack?

A. Yes, sir, I can say that the black jack, if the overflow occurred in the growing season, they would die and would not be in there at all.

Q. If the water was there three weeks?

A. It would kill them and if the water was there for a less than that during the growing season a consider-

able number of the trees would die, of course depending upon how long the water remained on the land. If the water remained on the ground, as much as three weeks, the black jack and post oak trees would have been killed, if in the growing season.

Q. The fact that you found a fewer between the 180 foot contour and the 185 foot contour, than above, indicates that the ovreflow did kill out a good many of them, did it not?

Q. Now that was not confined to the area of 180 foot contour to the 185 foot contour?

A. Above and below there had been a good deal of timber cut and removed, and in some cases there was not any timber left, and at other places there is some timber.

Q. I will ask you—you did make the point that there and between the 180 foot contour and the 185 foot contour than above the 180 foot contour?

A. Above the 185 foot contour there is a greater area, and between the 180 foot contour and the 185 foot contour the space is very narrow, not much space there, while above the 185 foot contour, you have a large area.

Q. I will ask you if that is significant to your mind that the high water killed out a great many of these trees up to the 185 foot contour?

A. No, sir, that is not the reason, for the rea-
140 son that in that area we have Post oak that is common to high dry land.

Q. But we have shown that the Post oak does stand some overflow and eliminating the Post oak, getting back to the black jack, now I will ask you, if the fact that you found a fewer black jacks between the 180 foot contour and the 185 foot contour than you did above the 185 foot contour, show that the overflow had killed out a great many of the black jacks between the 180 foot contour and the 185 foot contour?

A. No, sir, for the reason that we have post oak flats, if there were post oaks there and the absence of black jack oak there on that particular area, it does not indicate anything in particular with reference to whether it was high dry land, but we find a great area of it, that there is no black jacks, where there are a large number of large post oak.

Q. Then, the elimination of the black jacks from the land, renders it uncertain as to what the conditions were in 1812 and 1839?

A. In the area where the black jacks grow, it practically never overflows. It is a high land tree, grows on high dry land, grows on the high ridges and derives its moisture from the rain fall.

Q. Land that is subject to periodical overflows, may have up land not of a swampy character and the presence of black jacks might be there?

A. No, sir, they will not stand overflows.

Q. Would you conclude from your experience that the black jacks could not have existed during the overflow of 1892?

A. They might stand the water for two or three days. I do not think any one overflow for any one year would kill the trees, being for a short time, but overflows several years would kill the trees. I do not think that an overflow every year for a considerable length of time, say for a week or ten days, in the course of consecutive years would absolutely destroy the black jack oak and post oak.

Q. The fact that we have very few black jacks over seventy-five or ninety years, would not show anything as to the conditions of 1812 or 1839?

A. What black jack oak are there speak for themselves and the stumps in the territory between 180 and 185 foot contour, which you understand is a very narrow strip.

Q. How wide is that area?

141 A. It is not very wide, I would say the area averages about two chains or a little less on the west side of the tract.

On re-direct examination he said:

By Mr. Hunter:

Q. Mr. Janes, in your opinion, as an Ecologist, was any of the land involved in either of these suits formed by the recession or reliction of the waters of Ferry Lake since 1812?

A. No, sir.

Q. Do you find enough evidence of old trees on the Enders tract of land to prove to you, as an Ecologist that the land was in place in 1812 and 1839?

A. Yes, sir.

PROF. FRANK C. LEVERETT, a witness for the Plaintiff being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Hunter:

Q. You are a Geologist, are you not?

A. Yes, that is my profession.

Q. One of the Lecturers on Geology in the University?

A. I am.

Q. You testified in the trial of the case of the United States vs. Jeems Bayou Fishing and Hunting Club?

A. I did.

Q. Are you the same Prof. Leverett who testified in that case?

A. I am

Q. Professor, you as a Geologist in the employ of the Geological Survey of the United States, visited Ferry Lake in 1913 and 1914, did you not?

A. In 1914, twice in 1914, once in February and once in April.

Q. What was the purpose of your visit?

A. My purpose was to determine, the time at which the flooding of the valley in which Ferry Lake
142 lies was brought about. Whether the lake was there in 1812.

Q. You found from your investigation that it was there in 1812?

A. Yes, sir, found evidence of that fact.

Q. When you were there in 1913-1914, did you make an investigation to determine the mean high water elevation of Ferry Lake in 1812?

A. I found the topographic features that indicated mean high water from the time the lake came there until the raft was removed and that mean high water elevation Mr. Kidder found to be 173.09.

Q. Have you seen the line established by Mr. Kidder as representing the mean high water elevation?

A. Yes, sir, seen the posts along that line.

Q. Are those posts marking the mean high water elevation according to your conclusions?

A. Yes, sir, agree with my idea of where the mean high water is.

Q. What are those topographical indications of the mean high water?

A. They are the work of the waves in a succession of years, carried on for about a hundred years, constantly beating a certain level for a certain numbers of years, until they produce topographical features that can be recognized.

Q. What do you call that topographical effect?

A. The nature of the bank, a low bank.

Q. Well defined?

A. Yes, sir, sufficiently well defined to be traced practically continuous around the lake.

Q. State whether or not you can determine from geological conditions alone and without the aid of any surveyor or Ecologist or any other assistance, the mean high water elevation as it existed in 1812?

A. Yes, I can do that, if the forest were removed and there were no posts there.

Q. Did you determine the mean high water elevation, without reference to a survey?

A. Yes, sir, from topographical features.

Q. You say that that bank is well defined, practically continuous all around the lake?

A. It is.

Q. Are you familiar with the land involved in the suit of the United States vs. C. J. Greene, Jr., et al., in section twenty-seven?

143

A. Yes, sir.

Q. Have you been on that land?

A. I have been back and forth over all parts of it.

Q. When did you make an examination of it?

A. My examination began in 1914. I made another examination in 1918, January, 1918.

Q. When you made your examination in 1918, did anyone show you the lines, if so, who?

A. Mr. Clement, Surveyor, showed me the lines or angle points on the courses taken by Warren. We also followed the angle points on the 173.09 foot contour.

Q. Can you as a Geologist, determine from an examination of land whether land of that character is formed by accretion or reliction of the waters?

A. Yes.

Q. Referring to the land involved in the suit of the United States vs. C. J. Greene, Jr., et al., I will ask you to state whether or not it was land formed by accretion since 1912 or recession of the waters of Ferry Lake since that time?

A. It was not. It was land in place.

Q. Was it land in place in 1812 and 1839?

A. It was.

Q. Is there any doubt whatever about that fact?

A. No, sir.

Q. How do you determine that fact from Geology?

A. I determine it by an examination of the character of the materials, and the material there is the residuary material from the breaking down of the underlying rock formation. It is not a fresh deposit brought in by the lake and laid down, it is all old material, residual clay.

Q. If land is formed by accretion or new soil deposit, would it be loose texture?

A. Yes.

Q. What would have been the character of the soil had it been formed by recession of the waters of Ferry Lake since 1812?

A. There is no evidence of lake action, that would indicate any occupancy of the lake, above the level
144 stated.

Q. 173.09?

A. Yes, sir, since 1812.

Q. In your opinion as a Geologist, was the land in place in 1812 and 1839, substantially in the same conditions as it exists today?

A. It was.

Q. Now I will ask you to state whether or not the land in suit is all above mean high water, and was in 1812 and 1839?

A. I understand the area in suit, is all of that lying between the 173.09 foot contour and the meander line of Warren, that would be above the mean high water of Ferry Lake.

Q. What have you to say in regard to the slope of the ground, drainage conditions.

A. It has an inundulating surface, good drainage conditions.

Q. The slopes are sufficient to complete drainage?

A. Yes, sir. There are no ponds in there.

Q. Referring now to the Enders case, involving lots five and six of section nine, I will ask you to state whether you are familiar with that tract of land?

A. Yes, sir.

Q. Did you become familiar with that tract of land in 1914?

A. Yes. I visited the Club house ground and around it in February 1914 and again in 1918.

Q. Were the lines on the ground shown you and the land identified by a surveyor, at any time?

A. They were, by Mr. Clement in 1918. The line of the Bristol survey we followed that through from the point where it departs from James Bayou, east to where it intersects the Warren line of section ten, across sections nine and ten.

Q. You followed that line from point marked "A" to point "C" shown of resurvey plat offered in evidence and marked Plaintiff 9 in suit of United States vs. Jeems Bayou Fishing and Hunting Club?

A. Yes, sir, I did.

Q. You are familiar with the land involved in this suit, are you not?

A. Yes, sir.

Q. State whether or not all of the land in controversy lie above mean high water elevation of the lake?

145 A. It does lie above the 173.09 foot contour.

Q. Is the contour all around the lake marked by the banks that you have referred to?

A. Yes, sir, on the border, and on the Bayou as well as on the lake, especially well marked on James Bayou in this particular property I paid attention to that particularly the bank is well marked.

Q. That bank represents the mean high water elevation, as identified by the Kidder survey?

A. Yes, sir.

Q. You say that it is particularly well marked along James Bayou around the property involved?

A. Yes, sir, in section nine.

Q. What have you to say in regard to the drainage of the land involved in this suit?

A. It has good drainage, slopes, practically on the hill and the whole side is slope, a narrow ridge from the Club house east.

Q. The natural drainage is good?

A. Yes, sir.

Q. Is the land upland in character?

A. It is.

Q. From your examination of the area involved in this suit, state whether or not, in your opinion as a Geologist, it was land in place in 1812 and 1839?

A. It was.

Q. In your opinion, as a Geologist, was the area involved in this suit formed by accretion?

A. It was not.

Q. Or formed by the recession or reliction of the waters of Ferry lake since 1812?

A. It was not, the mean level of the lake is below the area in controversy.

Q. The area in controversy lies above the mean high water of the lake?

A. Yes, sir.

Q. What have you to say in regard to the character of the soil of the area involved in this suit, whether it shows the land was in place in 1812 and 1839?

A. It does. The soil is formed by slow pro-
146 cess, in the case just stated the residuary process of the breaking down of the formation.

Q. In the event the oil had been exposed by the recession of the water, would it be of a different character from the soil on this tract?

A. As a matter of fact if the mean high water elevation was above the 173.09 for a period of a number of years, the surface would show it, there would be wave work on it, and I failed to find any above the 173.09 foot contour.

Q. You failed to find any indications of mean high water, ever having occupied a higher elevation than the 173.09?

A. Yes, sir, I found that to be the mean high water elevation since 1812, which was 173.09, of course there may have been temporary floods, which did not produce definite banks, above the 173.09 foot contour.

On cross examination he said:

By Mr. Smith:

Q. You found there wave action, the top of the soil had been taken away up to the 180 foot contour, so that nothing but the clay was left?

A. There is no deposit and consequently a tendency to remove.

Q. Your bottom your evidence, based upon the evidence of the wave action along the shore?

A. That is the way that we determine the mean high water.

Q. Now showing you Plaintiff's exhibit No. 13 in the case of the United States vs. Jeems Bayou Fishing and Hunting Club, I will ask you, if it don't show that the current of James Bayou, in section four, set in close to the shore there?

A. Yes, sir.

Q. I will ask you, when the current, with the current of a rapid stream, if the wind is blowing, and it strikes an obstruction, if it don't make a deposit?

A. Yes, sir, a deposit on the inner side and erodes on the outside.

Q. Would not the effect be to make a promintory just below there at Wilson's point?

A. Would have made a deposit there in that
147 territory, immediately south of the lines of sections four and nine.

Q. Would have made a deposit?

A. Yes, sir.

Q. Now I will ask you if that so called current does not continue along the so called omitted area?

A. It strikes the east bluff near the center of section nine, or near the middle point of section nine, and tends there to errode.

Q. I will ask you, if hitting the promintory of Wilson's point creating an eddy, would not carry that deposit over the so called omitted area, if the water was high enough?

A. The banks there is sixteen feet, so that the water would have to be thirteen feet above the 173.09 foot contour, which would be a rare occurrence, in the pre raft stage, so that it would put very little deposit above the 173.09 foot contour.

On re-direct examination he said:

By Mr. Hunter:

Q. Referring to the plat about which you have been examined on cross examination, I will ask you to state whether or not you find any evidence, in the geological features, which you examined going to show that the omitted area, referring to the property in controversy had been formed since 1812 by the deposit of siltz or sediment from the Lake?

A. No, I found no such evidence on the area in question.

Q. In your opinion, the area in question was not formed by accretion since 1812?

A. Yes, sir, that is my opinion that it was not formed by accretion.

Q. You referred to one place on the topographic plat, about which you were question, where there probably might have been some accretion, now will you state whether or not, that was on the land in controversy, or outside of the land in controversy?

A. I said that nearly all of the floods would be below the 173.09 foot contour, be very rarely above, so that the deposit would be mostly below the 173.09 foot contour in the pre raft stage.

Q. So the deposit would be below the 173.09 foot contour in event there was any?

A. Yes.

Q. You found only slight evidence of deposit
148 above 162?

A. Yes, that is where the heavy deposit ceases, as far as I could find by sounding. I made soundings across the bed of the lake and at 162 I got out of where the deposit was that amounted to anything.

Q. 162 elevation is below the 173.09 foot contour which marks the mean elevation?

A. Yes, sir.

Q. You found no banks or evidence of deposit or sedimentation above the 173.09 foot contour, on any of the omitted area?

A. No, sir, I did not, could not find any evidence above the 173.09 foot contour, and I searched for it.

Q. You made a particular search for that?

A. Yes, sir.

Q. And failed to find any?

A. I found as I say the washed slopes with the residuary clay exposed all the way up from the 175 to 180 foot contour.

Q. Did that show a deposit of material or a sedimentation from the water, or washing away?

A. It indicated the effect of temporary flood stages, which would carry away any loose material, which was loose and ready to be carried away.

Q. It indicated a removal of material instead of a deposit of material?

A. Yes, sir, that is my judgment of the situation.

On cross examination he said:

By Mr. Smith:

Q. If this so called omitted area had been sloping towards the waters of Ferry Lake before the lake formed and deposits had been made there by the action of the currents of James Bayou at Plum Point, would not the action of the air in sixty or seventy years cause the siltz to rot and become part of the other soil?

A. No, sir, I do not think that would be sufficient time.

Q. Would not disintegrate in eighty or a hundred years?

A. No, I think the soil there is of a quality of thousands of years.

Q. If the vegetation and heavy undergrowth there, which continued for say eighty or a hundred
149 years, would it not have decayed and become a part of the original soil?

A. I do not think so.

Q. You have noticed the effect of damming the streams of water like dykes in the river?

A. Yes, sir.

Q. Now, have you not noticed that sand bars form a considerable distance around the dykes?

A. Yes, sir.

Q. That would not be dissimilar to the conditions of Plum Point

A. Be very similar.

On re-direct examination he said:

By Mr. Hunter:

Q. Is there any evidence whatever, that these lands in suit or any of the omitted land having been formed by a deposit of silts or sedimentation since 1812?

A. No, I have found no such evidence.

Q. Did you or not find this land to be of a character of up land?

A. I did, and long antedating 1812.

Q. Long antedating 1812?

A. Yes, sir, of the residuary soil formation from the underlying formation.

Counsel for Plaintiff offers in evidence in these consolidated cases, the interrogatories and answers to the interrogatories on file in the office of the Clerk of the United States District Court for the Western District of Louisiana, said interrogatories having been propounded by Plaintiff to the Defendants in said cases, in order to

ascertain the amount and value of the production of oil from the tracts in controversy.

Counsel for Defendants agree that the returns of the Standard Oil Company in the answers of the Interrogatories on facts and articles, correctly stated the amount of production.

Said statement showing the production of oil from the land in controversy in the case of the United
150 States vs. W. H. Enders, et al, No. 1160 was 2375 20-100 barrels of the value of $1577.24 and that the defendants, W. H. Enders, Levi Cooper, W. T. Crawford and W. F. Dillon received in royalties 296 91-100 barrels of the value of $197.16. This production shown by said statement, which is admitted was from the Club House well No. 3, the other well known as the Rendall No. 3 not having produced oil.

JAMES W. NEAL, a witness for the Plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. Hunter:

Q. You are Special Agent of the General Land Office?

A. I am.

Q. In these two consolidated cases, did you make an investigation at my request, to determine the amount of value of production from the tracts involved?

A. Yes, sir.

Q. From your examination of the statement attached to the answers to the Interrogatories, by the Standard Oil Company in the suit of the United States vs. W. H.

Enders, et al., and from the data you obtained, is that statement correct?

A. It is.

Q. Now, referring to the case of the United States vs. C. J. Greene, Jr., et al., have you made any investigation to determine the amount of production and the value thereof, in that case?

A. I have.

Q. What does your investigation show?

A. My investigation shows that the Greene No. 5, located on the land in question, began to produce oil August 10th, 1916, and that to and including December 31st, 1917, it had produced 2071 90-100 barrels of oil of the value of $3171.53. The Amateur Oil Company operated the well from August 10th, 1916, until May 15th, 1917, inclusive, and secured therefrom 1304- 9-100 barrels of oil of the value of $1686.36 and that they paid to C. J. Greene, Jr., royalty of 163 1-100 barrels of the value of $210.79. My investigation also shows that the Louisiana Oil Refining Company and the Louisiana Oil Re-
151 fining Corporation operated the well since May 16th and from that date to December 31st, 1917, 767 81-100 barrels of oil was extracted of the value of $1485.17 and that the royalty on this was paid to Greene of 95 97-100 barrels of the value of $185.65, making a total royalty received by Greene of 396.44 to December 31st, 1917.

The well known as Greene No. 5 was drilled by the Amateur Oil Company and their records show the cost of drilling as $6194.78 and that the cost of operating the well from August 5th, 1916, to May 15th, 1917, was $834.00 the cost of operating the well from May 16th, 1917, to December 31st, 1917, as shown by the records of the Louisiana Oil Refining Corporation, being esti-

mated at $741.74, making a total counter claim in the case to December 31st, 1917, of $7770.02.

It is agreed that James W. Neal, Special Agent from the General Land Office shall compute the total production of the Louisiana Oil Refining Company up to the time of the sale of said Company to the Louisiana Oil Refining Corporation, and shall furnish the figures showing the amount and value of said production to the stenographer herein.

It is further agreed that the said James W. Neal shall compute the amount and value of the production from the said land by the Louisiana Oil Refining Corporation and shall furnish said figures to the Stenographer to be inserted in the record.

It is further agreed that the Louisiana Oil Refining Corporation will respond to any judgment which may be rendered against it in these cases, without being made formal parties thereto said Louisiana Oil Refining Corporation reserving all of its rights in the premises but makes no objection to the fact that it has not been made party defendant herein.

Counsel for Plaintiff, with the consent of Counsel for defendants states that the introduction of testimony herein, by the Government shall not relate to any counterclaim of any kind asserted by the defendants, and shall not be considered as an admission on the part of
152 Plaintiff as to any such counterclaim or claims.

DEFENDANTS' EVIDENCE.

Counsel for Defendants offer in evidence abstract No. 5435 of the Caddo Abstract Company, pages 2 to 36, inclusive, with the right to have the abstract brought down to date.

Filed in Evidence and marked Exhibit No. 1.

Counsel for Defendants offer in Evidence the location made of the Placer mineral claim, Nos. 58,391 and 59, 391, with leave to substitute certified copies thereof.

EVIDENCE IN REBUTTAL.

Counsel for Plaintiff offers in evidence in rebuttal, for the sole purpose of showing that Charles J. Greene, Jr., recognized the title of the United States to the land in controversy, mineral locations shown in the abstract offered in Evidence by defendants being located June 10th, 1910, and June 17th, 1910, and January 22nd, 1913.

Evidence closed with the exception of the right of the defendant to put C. J. Greene, Jr., on the stand and the right of the Plaintiff to offer any evidence they see fit in rebuttal of any future testimony.

Evidence on behalf of the Standard Oil Company of La. one of the co-defendants:

J. C. PUGH, attorney, made a statement as follows:

The Standard Oil Company of Louisiana has bought from the property in dispute in this case 2,375.20 barrels of oil of the value of $1,577.24, as stated in answer to the seventeenth interrogatory propounded by the Plaintiff to this defendant.

This is all of the oil that has been bought or taken from the property in dispute in this case by the Standard Oil Company of Louisiana. The statement annexed to the interrogatories represents the correct
153 amount taken and the value thereof, and also indicates the payments to the respective parties.

The Standard Oil Company of Louisiana did not operate this propery but bought the oil from the operators and respective royalty claimants. No oil has been taken from the property by this defendant since the date of the rendition of the statement annexed to the answers to the interrogatories.

I hereby certify that the above and foregoing is a true and correct translation of my stenographic notes taken on the trial of the above numbered and entitled causes.

R. B. COOK, Stenographer.

154 Statement Showing the Production of Greene No. 5 and the Division of the Oil Between C. J. Greene, Amateur Oil Co., The Louisiana Oil Refining Co., and The Louisiana Oil Refining Corporation.

No. 5 Produced.

		Value.
August 10, 1916 to May 15, 1917	1304.09 bbls.	$1686.36

All of this oil was purchased by the Louisiana Oil Refining Co. and the proceeds divided as follows:

C. J. Greene	163.01 bbls.	$ 210.79
Amateur Oil Co.	1141.08 bbls.	1475.57
May 16 to December 31, 1917...	767.81 bbls.	$1485.17

All of this oil was produced and sold by The Louisiana Oil Refining Corporation and the proceeds divided as follows:

C. J. Greene (Royalty)	95.97 bbls.	$185.65
The Louisiana Oil Refining Corporation	671.84 bbls.	1299.52

Counter-Claim.

Cost of drilling well Greene No. 5 as shown by Amateur Oil Co.	$6194.78
Cost of operation from Aug. 10, 1916 to May 15, 1917	834.00
Cost of operation from May 16 to December 31, 1917	741.74
Total	$7770.52

Summary.

Total Amt. in dollars received by the Amateur Oil Co. and purchased by The Louisiana Oil Refining Co.	$1475.57
Total Amt. in dollars received by The Louisiana Oil Refining Corporation	1299.52
Total Amt. received by C. J. Greene in dollars as Royalty from the Amateur Oil Co. and The Louisiana Oil Refining Corporation	396.44
Total	$3171.53
Total Counter-Claim	$7770.52

This statement prepared by Jas. W. Neal, Special Agent General Land Office as agreed.

JAS. W. NEAL.
R. B. COOK, Stenographer.

Filed Jan. 21, 1919.

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155 NO. 1155—PLAINTIFF A. 16.

4-207.

DMG—"FS" Department of the Interior,
"B" General Land Office,
CRGO Washington, D. C.

January 16, 1918.

I hereby certify that the annexed extract of Louisiana tract book, so far as it shows section 27, T. 20 N., R. 16 W., Louisiana Meridian, is a true and literal exemplification from the tract book on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal) D. K. PARROT,
Acting Assistant Commissioner
of the General Land Office.

Indorsed:—Plaintiff A. R. B. Cook, Stenographer. Filed Jan. 21, 1919.

Description of Tract.

4-600.

(Offered at Sale on the 27th Jany., 1840).

Township No. 20 N. Range No. 16 W., District of Natchitoches, La.

Tp. withdrawn from all disposal by Secy. Dec. 15, 1908. See "A" to R. & R. Natch., Dec. 15, 1908.

Petroleum Reserve No. 4, Ex. Order July 2, 1910, Letter "N" July 16, 1910—54239.

Resurvey (or Restoration survey) Plat approved July 25, 1916 (no areas shown, original plat governs).

Suppl. Plats, (Sheets 1 and 2) of part of Tp. approved March 28, 1917, received in local office, Baton Rouge, April 14, 1917.

Part of Section—Section—Township—Range—Contents, Acres, 100ths—Rate per Acre, Dollars, Cents—Purchase Money, Dollars, Cents—Name of Purchaser—Date of Sale—Number of Receipt and Certificate of Purchase—To Whom Patented—Date of Patent—Where Recorded, Volume, Page.

Frl. NW 4 W 2 frl. SW frl offd. Apr. 24, 1880.

NE¼ of SE¼; 27; 20; 16.

N frl. ½ of NE fr. qr. of SE¼ and NE. frl. ¼; 27; 20; 16; 468.87; 123.49; .75; 92.62; Matthew G. Jackson; 1859—March 3; 14454; 14454.

S. fr. ½ of NE fr. qr.

Lot 1—14.13.

Lot 2—29.34.

Lot 3—36.43.

NW. fr. qr. 6800.

E½ SW¼ and NW SE¼; 27; 20; 16; 118.87; 1.25; 148.59; Matthew G. Jackson; July 12, 1853 9669; 9669. SE qr. 158:50.

NW¼ SE¼.

S½ SE¼; 27; 20; 16; 79.25; located by William Rakertsow; 1852—Sept. 9th per Milit Warrant No. 40,312 Act. 1850.

Hd.; 27; 20; 16; 147.25; 10.00; Royden D. Elmore; June 24, 1904; 10439; Canceled by "H" June 13, 1908.

SW qr. 15850.

Hd. NW. frl. ¼ and W½ SW¼; 27;20;16; 147.25; 038.55; 13.68; Charles J. Greene; June 20, 1908; 11245; Natch—Baton Rouge 03855—Cash 29, 1911.

156 "B" ... 4-207.

CRGO Department of the Interior,
General Land Office,
Washington, D. C.

November 8, 1917.

I hereby certify that the annexed copy of letter dated December 15, 1908, is a true and literal exemplification from the perss copy on file in this office.

In witness whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal) D. K. PARROTT,
Acting Assistant Commissioner of
the General Land Office.

(PLAINTIFF'S EXHIBIT "C.").

Filed Jan. 21, 1919. File.

Department of the Interior,
General Land Office.
Washington, D. C.

Address only the
Commissioner of the
General Land Office.

December 15, 1908.

See also 1910-44655.

Register and Receiver,
Natchitoches, Louisiana.

Sirs:

To conserve the public interests, and, in aid of such legislation as may hereafter to proposed or recommended, the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, Natchitoches Land Office, Louisiana, are, subject to existing valid claims,

withdrawn from settlement and entry, or other forms of appropriation.

Respectfully,

FRED DENNETT, Commissioner.

Approved:

JAMES RUDOLPH GARFIELD,
Secretary.

157 (PLAINTIFF'S EXHIBIT "D")

4-207.

"B".
CRGO.

Department of the Interior,
General Land Office,
Washington, D. C. November 8, 1917.

I hereby certify that the annexed copy of order of withdrawal, Petroleum Reserve No. 4, approved July 2, 1910, is a true and literal exemplification from the original order on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

D. K. PARROTT,
(Seal) Acting Assistant Commissioner of the General Land Office.

ECF.
dmg-1 fs q 54239
Jul. 9, 1910.

Department of the Interior,
United States Geological Survey,
Washington, July 1, 1910.

Office of the Director.

The Honorable,
The Secretary of the Interior.

Sir:

In accordance with your instructions I recommend the withdrawal for classification and in aid of legislation affecting the use and disposition of petroleum deposits belonging to the United States of the following areas in the State of Louisiana, involving approximately 314,720 acres:

Order of Withdrawal.

Petroleum Reserve No. 4.

It is hereby ordered that that certain order of with-

158 Petroleum reserve No. 4, p. 2.
dmg-2 fs.

drawal heretofore made on December 15, 1908, in so far as the same includes any of the lands hereinafter described, be, and the same is hereby ratified, confirmed, and continued in full force and effect; and subject to all the provisions, limitations, exceptions, and conditions contained in the act of Congress entitled "An Act to authorize the President of the United States to make withdrawals of public lands in certain cases," approved June 25, 1910, there is hereby withdrawn from settlement, location, sale

or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States, all of these certain lands of the United States set forth and particularly described as follows, to wit:

Louisiana Principal Meridian, Louisiana.

T. 17 N., R. 10 W., all of township.
T. 18 N., R. 10 W., all of township.
T. 18 N., Rs. 14 to 16W.
T. 19 N., Rs. 14 to 16W.
T. 20 N., Rs. 14 to 16 W.
T. 21 N., Rs. 14 to 16 W.
T. 22 N., R. 15 W., all of township.
T. 22 N., R. 16 W., all of township.
T. 23 N., R. 15 W., all of township.
T. 23 N., R. 16 W., all of township.

Very respectfully,

GEO. OTIS SMITH,
Director.

July 1, 1910.

Respectfully referred to the President with the recommendation that the same be approved.

R. A. BALLINGER,
Secretary.

Approved July 2, 1910, and referred to the Secretary of the Interior.

WM. H. TAFT,
President.

159 Referred to the Commissioner of the General Land Office for appropriate action.

FRANK PIERCE,
Acting Secretary.
DMC.

Indorsed: Pl. D. R. B. Cook Stenographer, Filed Jan. 21, 1919.
B.

4-600.

160 (PLAINTIFF'S EXHIBIT "E")

Township No. 20 North, Range No. 16 West., District of Natchitoches, La.

Description of Tract.

Part of Section—Section—Township—Range—Contents, Acres, 100ths—Rate per Acre, Dollars, Cents—Purchase Money, Dollars, Cents—Name of Purchaser—Date of Sale—Number of Receipt and Certificate of Purchase—To whom Patented—Date of Patent—Where Recorded, Volume, Page.

NW¼ NE¼; 9; 20 N; 16 W; 40.00; Thomas H. Pitts; July 6, 1874; 17860; Thomas H. Pitts; Mar. 1, 1878; 31: 492.

Lots 1 & 2 frl. Sec. 4; 6 frl. ½ or Lots 2 & 3; NW¼ NE¼, Lots 1 & 4; 9; 20N; 160; 160.00; 125; H. E; Thomas H. Pitts; Aug. 29, 1871; 287; Commuted to Cash Entry No. 17680 & Mil. Wt. No. 34916 and Excess R. No. 17680. Patent Transmitted to James H. Noel, Mooringsport, La. —by Hon. Commr. Feby. 27, 1892.

NE¼ NE¼ 9; 20N; 160; 40.00; Approved as Swamp & Overflow Land to State of Louisiana; List 81 by Secty. of Interior, June 12, 1900; L. 2015; L. 2231.

Pre. 38 Frl. Section 24; 20N; 160; 114.80; 125; 143.50; James Sherick, 25 Jany., 1840; 1829.

United States Land Office,
Baton Rouge, La.
Dec. 15, 1917.

We hereby certify that the foregoing has been compared with the records of this office, and is a full, true and correct copy.

E. D. GIANELLONI, Register.
.....Receiver.

No. 1155. —19. Plaintiff E. R. B. Cook, Stenographer. Filed Jan. 21, 1919, J. D. McClure, Cf. Dy. Clerk, U. S. District Court, West. Dist. of Louisiana.

161 Notice of Location. Conv. Book 59, page 569, No. 17465. Dated June 10, 1910. Filed June 13, 1910. 1 Witness.

Notice is hereby given that the undersigned, all of whom are residents of the United States, having complied with the requirements of Chapter Six of Title Thirty-two, of the Revised Statutes of the United States and the Local Laws, Rules and Regulations and under the authority of the Act of Congress of Feb. 11, 1897 relating to the location of land containing oil and other mineral ore under Placer Mining Plain; the undersigned has located 147 25/100 acres of land in the Parish of Caddo, State of Louisiana, and described as follows:

The W½ of the SW¼ and NW¼ Frl. Fourth of Section 27, Twp. 20, Rng. 16. West, La. Mer., Caddo Parish, Louisiana.

Witness our hands and seal on this the 10th day of June 1910.

Attest:
TURNER COMINGS.

Locators.
WILLIAM STRACHEN, per
C. J. GREEN, Jr.,
THOMAS STRACHAN, per
C. J. GREEN, Jr.,
ALEX STRACHAN, per
C. J. GREEN, Jr.,
W. STRACHAN, per
C. J. GREEN, Jr.,
A. STRACHAN, per
C. J. GREEN, Jr.,
MARY STRACHAN, per
C. J. GREEN, Jr.,
WILL GREENE, per
C. J. GREEN, Jr.,
L. GREEN, per.
C. J. GREEN.

162 Notice of Location Conv. Book 59 Page 598, No. 17555. Dated June 17th, 1910. Filed June 20, 1910, 2 Witnesses.

Notice is hereby given that the undersigned, all of whom are residents of the United States, having complied with the requirements of Chapter Six of the Title Thirty Two

(32) of the Revised Statutes of the United States and the Local Laws, rules and regulations and under the authority of the Act of Congress of Feb. 11th, 1897, relating to the location of lands containing oil and other mineral ore under Placer Mining Plain; the undersigned has located 61.75 acres of land in the Parish of Caddo, State of Louisiana and described as follows:—

The Frl. W½ of Sec. 22 and all land below the U. S. Traverse in NW Frl. ¼ sec. 27 (all in T. 20 R. 16 W. La. Mer.)

Witness our hands and seal on this the June 17th, 1910.

Locators.

ROBERT B. GREEN,
ROY KEENY,
CARL DeSEAY,
C. J. GREEN, Jr.
Attorney for all.

Attest:
C. J. GREEN, Jr.
JOHN ALLEN.

163 Notice of Location Conv. Book 80, page 638, No. 36777. Dated January 22, 1913. Filed January 23, 1913.

Jessie S. Greene
to
The Public.

Notice is hereby given that the undersigned, all citizens of the United States, having formed an association for mining purposes in State of Louisiana and having complied with Chapter 6 of Title 32 of the Revised Stat-

utes of the United States and Act of Congress approved Feb. 11, 1897, entitled an Act to authorize the Entry and Patenting of lands containing petroleum of other mineral oils under the Placer Mining Laws, of the United States, have filed and located on the following described lands:

Fractional NW¼ of Sec. 27 between U. S. Traverse line and Lake and in SW¼ Sec. 22, all in Twp. 20. Rng. 16, containing 80 acres more or less, situated in Caddo Parish, La.

Witness:
CHAS. J. GREENE, Jr.
L. S. ELLETT.

Locators:
JESSIE S. GREENE,
ROBERT B. GREENE,
C. G. GREENE,
J. ROY KEENY,
All Pres. Chas J. Greene

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164 (AGREEMENT OF COUNSEL AS TO TRANSCRIPT.)

Whereas it was agreed upon the trial of the aforesaid case that the evidence theretofore adduced in the case entitled United States of America versus Jeems Bayou Hunting & Fishing Club, et al, No. 1157, on the docket of the United States District Court for the Western District of Louisiana, at Shreveport, Louisiana, should be offered in evidence and considered as if taken in the aforesaid case in so far as such evidence and the exhibits filed in connection therewith were applicable to the issues of the aforesaid case; and

Whereas there were introduced in evidence on the trial of the aforesaid case numerous plats and maps of surveys, photographs and other documents and exhibits, the reproduction of all of which in the transcript of appeal would entail heavy and undue expense and costs; and

Whereas there was received in the aforesaid case much expert and technical evidence which would be very difficult to reduce to a clear and exact narrative form; and

Whereas it is deemed desirable by counsel for plaintiff and defendants in the above entitled case that the testimony of witnesses be reproduced in the exact words of said witnesses;

Now, therefore, it is hereby agreed and stipulated by and between counsel for plaintiff and defendants respectively, with the direction of the Honorable Judge of the United States District Court for the Western District of Louisiana, that all plats, maps of surveys, photographs and other exhibits introduced and filed in evidence by the plaintiff or defendants, or any of them, in the above entitled case, with the exception of such plats, maps and exhibits that are to be incorporated in the transcript in this cause, in accordance with the precipe filed by defendants, a copy of which has been delivered to plaintiff's attorney, shall be transmitted to the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, Louisiana, in the original and shall be deemed and considered a part of the transcript of appeal; and it is further agreed that the testimony of witnesses, taken in the aforesaid case, shall be reproduced in the exact words of the witnesses.

165

It is further agreed and stipulated that as to the deeds and conveyances or other instruments introduced in evi-

dence in the aforesaid case, it will only be necessary to state the dates of said deeds or conveyances, their nature and object and the description of the land affected thereby, all other matters being omitted, unless otherwise directed by the precipe of either party.

It is further agreed and stipulated that the transcript of appeal in the case entitled United States of America versus Jeems Bayou Hunting & Fishing Club, et al., No. 1157 on the docket of the United States District Court for the Western District of Louisiana at Shreveport, Louisiana, and the exhibits and documents made a part thereof, shall be deemed and considered as a part of the transcript in the above entitled case, in so far as applicable to the issues in such case, to the same extent and with the same effect as if formally incorporated in the transcript in this cause.

ROBERT A. HUNTER,
Solicitor for Plaintiff.

COOK & COOK,
Solicitors for Charles J. Greene, Jr.

BLANCHARD, GOLDSTEIN & WALKER,
Solicitors for Louisiana Oil Refining Corporation and Louisiana Oil Refining Company.

166 (PRAECIPE FOR TRANSCRIPT).

Honorable W. B. Lee, Clerk of the United States District Court, Shreveport, La.

Dear Sir:-

You will please prepare the transcript of appeal in the above entitled cause, returnable to the Circuit Court of Appeals of the United States for the Fifth Circuit, sitting at New Orleans, in the State of Louisiana, and you will include in said transcript the following:

1. Bill of Complaint of plaintiff, filed July 19, 1917,

2. Answer of Amateur Oil Company, Incorporated, filed August 13, 1917.

3. Plaintiff's reply to set-off and counterclaim of Amateur Oil Company, Incorporated, filed August 18, 1917.

4. Application and order for interrogatories and interrogatories, filed by plaintiff February 20, 1918, and answers thereto.

5. Answer of Charles J. Greene, Jr., to the bill of complaint filed March 18, 1918.

6. Answer of Louisiana Oil Refining Company and Louisiana Oil Refining Corporation to the bill of complaint, filed ....., 1918.

7. Order of Court dated March 29, 1918, and filed same date, appointing Honorable E. H. Randolph Special Master.

8. In full the opinion and recommendations of the Honorable E. H. Randolph, Special Master, filed January 11, 1919.

9. Exceptions of C. J. Greene, Jr., and Louisiana Oil Refining Corporation and Louisiana Oil Refining Company to the report of the Special Master, filed January 30, 1919.

10. Opinion of the Honorable Rufus E. Foster, Judge, filed under date July 17, 1919.

11. Decree entered by the Honorable Rufus E. Foster, Judge and filed August 12, 1919.

12. Defendants' petition for appeal and order of appeal, filed under date of September ....., 1919.

13. Defendants' assignment of errors, filed under date of September ....., 1919.

167 14. Supersedeas bond for appeal filed by defendants, Charles J. Greene, Jr., Louisiana Oil Refining Corporation and Louisiana Oil Refining Company under date of September ....., 1919.

15. The testimony of the following witnesses:

J. W. Neal;
Arthur D. Kidder;
L. L. Clement;
Dr. Henry C. Cowles;
Lionel L. Janes;
Frank C. Leverett.

16. Extract from tract books of the General Land Office relating to Section 27, Township 20 North, Range 16 West, marked plaintiff A.

17. Withdrawal order dated December 15, 1908, marked plaintiff C.

18. Withdrawal Order dated July 2, 1910, marked plaintiff D.

19. Records of the United States Land Office at Baton Rouge, Louisiana, marked plaintiff E.

20. Supplemental plat of Township 20 North, Range 16 West, approved by the Commissioner of the General Land Office March 28, 1917, together with memoranda, legend and illustrative profile thereon, marked plaintiff F.

21. Supplemental topographic plat of Township 20 North, Range 16 West, together with legend, notation and certificate thereon, marked Plaintiff G.

22. Supplemental plat of Township 20 North, Range 16 West, with memoranda and legend thereon, which plat was approved by the Commissioner of the General Land Office, March 28, 1917.

23. Topographic map of Township 20 North, Range 16 West, with legend and certificate thereon, which map was approved by the Commissioner of the General Land Office, March 28, 1917, marked Plaintiff H.

24. Stipulations of counsel on page 68 of the record, together with statement of James W. Neal, Special Agent, referred to therein.

25. Mineral locations shown by abstract offered in evidence by defendants, page 69 of testimony, together with statement on page 69 of the note of evidence, containing plaintiff's offering of same, said mineral locations being dated June 17, 1910, and June 22, 1913.

26. Abstract No. 5435 compiled by Caddo Abstract Company, marked Exhibit No. 1.

27. Location of placer mining claims, Nos. 58391 and 59391, filed in evidence. (See Transcript page 69).

COOK & COOK,
Solicitor for Charles J. Greene, Jr.

BLANCHARD, GOLDSTEIN & WALKER,
Solicitors for Louisiana Oil Refining Corporation and Louisiana Oil Refining Company.

Indorsed: Praecipe and Agreement of Counsel. Filed Oct. 21, 1919.
B.

167½ STIPULATION OF COUNSEL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,

v. No. 1155.

Charles J. Greene, et al.

In the above numbered and entitled cause it is agreed that the Clerk of Court shall incorporate in the transcript of appeal in this cause:

Plaintiff's petition for cross appeal, order of Court thereon and assignment of errors.

Thus done and signed this 5th day of April, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.

BLANCHARD, GOLDSTEIN & WALKER,
Attorneys for Defendants.

Indorsed: Stipulation of Counsel. Filed Apr. 8, 1920. B.

168 United States District Court, Western District of Louisiana.

Clerk's Office:—

I, W. B. LEE, Clerk of the United States District Court for the Western District of Louisiana. do hereby certify that the foregoing ..... pages contain and and form a full, true and correct transcript of the record and proceedings had, together with the evidence adduced on the trial, in the cause of

United States of America,
Plaintiff,

vs.

Charles J. Greene, Jr. et al,
Defendants,

No. 1155 on the Equity Docket of said Court, as the originals of same appear on file in this office—the said transcript having been prepared in accordance with Agreement and Praecipe of counsel filed herein, a copy of said praecipe accompanying this transcript.

I do further certify that Items Nos. 23, 24, 25 and 26, being Plaintiff's Exhibits F, G, H and I, are sent up in the originals, but are to be printed and included in the printed transcript, and item No. 29, Abstract No. 5435, Exhibit No. 1, is sent up in the original.

Witness my hand and seal of office at the City of Shreveport, Louisiana, on this the 10 day of April, A. D., 1920.

(Seal) W. B. LEE, Clerk.
U. S. District Court, for the Western District of Louisiana.

Citations omitted from the printed record, being filed in the original.

• • • • • • • • • •

215 That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION.

Extract from the minutes of March 7th, 1921.

CHARLES J. GREENE, JR., ET AL.,
versus
THE UNITED STATES OF AMERICA, ETC. } No. 3523.

On this day this cause was called, and, after argument by Robert A Hunter, Esq., special assistant to the Attorney General, for appellee and cross appellant, and Elias Goldstein, Esq., for appellants and cross appellees, was submitted to the court.

216 OPINION OF THE COURT—FILED JULY 8TH, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

CHARLES J. GREENE, JR., LOUISIANA OIL REFINING Company, and Louisiana Oil Refining Corporation, appellants and cross appellees,
versus
THE UNITED STATES OF AMERICA, APPELLEE and cross appellant. } No. 3523.

A. C. LOUCKS, STAR OIL COMPANY, AND GULF Refining Company, appellants and cross appellees,
versus
THE UNITED STATES OF AMERICA, APPELLEE and cross appellant. } No. 3525.

Appeals and cross appeals from the District Court of the United States for the Western District of Louisiana.

F. M. Cook, S. M. Cook, N. C. Blanchard, H. C. Walker, Jr., and Elias Goldstein, for appellants and cross appellees in No. 3523.

J. D. Wilkinson, S. L. Herold, J. A. Thigpen, D. Edward Green, and R. L. Batts, for appellants and cross appellees in No. 3525.

Robert A. Hunter, special assistant to the Attorney General for the United States.

Before Walker, Bryan, and King, Circuit Judges.

KING, Circuit Judge:

On July 19th, 1917, the United States filed in the United States District Court, for the Western District of Louisiana, a bill in equity against Charles J. Greene, jr., and others, seeking a decree setting up its title, and granting relief in regard to certain
217 lands described as lots 2 and 3 of section 27, township 20, north, range 16, west, Louisiana meridian, containing 65.77

acres according to a plat of survey approved March 28th, 1917, by Clay Tallman, Commissioner of the General Land Office of the United States.

On August 2nd, 1917, the United States filed a similar bill in said court against A. C. Loucks and others seeking a like decree as to the land described therein as lot number 4 of said section 27 according to the same plat of survey.

Each bill prayed a decree declaring the lands to be mineral in character, and to be the property of the United States; declaring all adverse claims or titles of the defendants to be null and void; cancelling the same as a cloud on complainant's title, and enjoining the defendants from creating any cloud on complainant's title to the lands, or any oil, gas, or mineral therein, or from extracting the same therefrom. It prayed for the appointment of a receiver to take charge of said lands pendente lite and for an accounting for the value of the oil and gas theretofore extracted therefrom by the defendants.

The defendants in each case denied the title of the United States and asserted that the land was held by them by mesne conveyances under patents theretofore granted by the United States conveying the same.

Greene and his codefendants asserted title under a patent including the fractional NW. ¼ of said section 27.

Loucks and his codefendants asserted title under a patent including the fractional NE. ¼ of said section 27. Each answer averred that at the dates of said patents said fractional NE. ¼ and NW. ¼ of said section 27 were conveyed according to the plat of survey then on file in said land office, and bordered on and adjoined Ferry
218 Lake, and there was no land indicated as between the meander line and the waters of said lake (which is a navigable body of water). That said patents embraced and conveyed the lands now claimed by the United States.

The entire township 20 was originally surveyed by one Warren, in 1839. His plat of township 20 showed Ferry Lake as the northerly boundary of fractional lot 27. No land is indicated on said plat as lying between the meander line of said lake and the waters thereof. In 1908 the presence of oil in adjacent territory caused the President to withdraw all lands of the United States in this and other townships from any manner of appropriation, and a resurvey of this township was directed where it bordered on Ferry Lake and its arms. This survey determined that the mean high water level of Ferry Lake at the time of said Warren survey in 1839, as well as in 1812, when Louisiana became a State, was 173.09 feet above the Gulf level. That Warren so recognized it and that his section lines terminated at the lake at this elevation, but that in meandering the shore of said lake in front of said section 27 Warren's courses and distances do not follow the shore of the lake, but run over high ground which at its farthest point is about 1,200 feet from the true shore line. The omitted land is intersected with several ravines running to Ferry Lake. It contains 97.64 acres divided into lots 2, 3, and 4 of section

and fractional section 23, as per said plat of survey of March 28th, 1917; the lots 2 and 3 contain 65.77 acres; No. 4 contains 14.13 acres and section 23, 17.44 acres. The acreage of section 27 as surveyed by Warren in 1839 was 468.87 acres. The acreage claimed by the defendants in case No. 3523 to be included in the Warren survey and the patent thereunder under which they claim is that in lots 2 and 3 and about ½ of the 16.61 acres described as the fractional section 23 in the Kidder survey, or 74.08 acres. That claimed by the defendants in No. 3525 is lot No. 4 of section 27 and the rest of said fractional section 23, or 23.56 acres. While these suits involve no part of the land described as section 23, the title to the acreage is necessarily disposed of by the decision of these cases.

The cases were referred to a master, who took testimony and made a report finding that the land in controversy had been omitted from the Warren survey by manifest error, and that the Government was the owner thereof. He also found that the Government was entitled to recover the value of the oil received therefrom, less all costs of extracting the same. The defendants excepted to the report, and the Government to so much thereof as allowed to defendants the cost of raising said oil.

The court overruled all exceptions and rendered a decree in favor of the Government, in accord with the master's report.

The defendants appealed, assigning error in the finding that the Government was the owner of the land, and the Government has taken a cross appeal from the finding that defendants were to be credited with the cost of raising said oil.

There was no dispute as to the facts. The only evidence on which the master predicated his finding that the patents, including the northwest and northeast fractional quarters of said section 27 did not cover the land sued for by the Government, was that the resurvey of township 20 by Kidder and a reproduction of the meander line of the Warren survey, according to the calls in Warren's field notes, did not follow the ordinary high-water elevation of 173.09 feet above Gulf level, but ran over high ground at distances varying from a few feet to about ¼ of a mile from said 173.09 feet contour. Warren's plat does not show any meander line, but gives the waters of Ferry Lake as the boundary of the fractional sections bordering thereon. The section lines of these sections are conceded to reach the ordinary high-water level, as determined by Kidder and the scientific experts to have existed at the time of Warren's survey.

Kidder's survey was made for the purpose of marking the ordinary high-water level of Ferry Lake in 1839, at the time of Warren's survey. This elevation was determined by careful examination and by ecological and geological experts, and a meander line carefully run at 173.09 feet above Gulf level, that having been fixed as the ordinary high-water level existing in 1839.

The plat of this survey also traces the meander line as given by the calls of Warren's field notes.

Both meander lines thus marked, beginning on the west side of section 27, were generally in a northeast direction to the most northerly point of the land on the south shore of Ferry Lake, as marked
221 on the Kidder and Warren plats, respectively, and then run in a southerly and southeasterly direction to section 26 on the east.

The additional land shown on Kidder's plat is a strip bounded on the north by a broken line, forming roughly an arc with the courses of Warren's meander line as its chord. Its greatest width is about one-quarter of a mile; its length is about one mile.

The evidence shows that the land in controversy was regarded as conveyed by said patents; that parts of it were cultivated and a dwelling house was erected on the part sued for in the Greene case, near the lake. The Warren plat referred to in said patents indicated Ferry Lake as the northern boundary of the land conveyed by each patent.

The only apparent reason for the departure of the traverse line from the shore of the lake is that the land was broken with ravines running down to the lake; that these ravines in times of very high water were partially flooded and the convenience of the surveyor may have occasioned a failure to follow the water level, the land left out being at the time of little value. In other parts of this survey the Warren meander line, as reproduced by Kidder, in places runs into the lake and includes within its calls, as land, small portions of the lake.

There is no suggestion of any purpose on the part of Warren not to include all the land up to the water of the lake in this section as surveyed; and if the land described in the Kidder survey
222 as outside of Warren's traverse line, in section 27, is included it still leaves section 27 a fractional section.

The evidence of the Government to the effect that the traverse line was a manifest error is only the expression of an opinion, based solely on the fact that it runs from the margin of the lake on high ground in the meander heretofore described. This opinion is based on an absence of explanation given for the discrepancy, and not on any evidence of an intention to make the line one of boundary, and to depart from the general rule. It is conceded that the survey as a whole (except in the case where a large tract was clearly omitted where Jeems Bayou and Ferry Lake unite) follows generally the contour of the lake and makes the lake the boundary.

It is also not disputed that as to the land sold by the Government in section 27 the survey referred to in the patent represented the lake as its boundary. The question therefore is:

Did the evidence in this case show that there was such a mistake in the Warren survey that the Government can now have the same corrected against the present owners of the land conveyed by its patents?

These patents respectively conveyed the land mentioned therein "according to the official plat of survey of said lands returned to the General Land Office by the surveyor general." (This was the Warren survey.)

This constituted such plat a part of the deed, "and controls so far as limits are concerned, as if such descriptive features were written out upon the face of the deed or the grant itself." Cragin v. Powell, 128 U. S. 693; McIver's Lessee v. Walker, 9 Cranch, 173, 177; Jeffries v. East Omaha Land Co., 134 U. S. 178, 194–5;
223 Chapman et al. v. St. Francis Levee District, 232 U. S. 186, 197.

The general rule, well established by decisions of the Supreme Court of the United States, is that where a meander line is run, if lands are described as bordering on a stream or body of water, the meander line is not a boundary, but the waters themselves constitute the boundary—the meander line being intended to ascertain the approximate acreage which is to be paid for. Railroad Co. v. Schurmeir, 7 Wall. 272, 286; Hardin v. Jordan, 140 U. S. 371, 380.

The patent to the fractional part of section 27 held by defendants in the Greene case called for 147.25 acres. The land claimed by the Government as outside of this acreage is 65.77 acres, and the additional land involved in section 23 is about 8.30 acres, so that the land claimed by defendants is about fifty per cent in excess of the acreage given in said patents. The acreage covered by the patent under which defendants claim in the Loucks case is 123.49½ acres, and the land claimed by the Government as outside of this acreage is 14.13 acres; the additional land involved in section 23 is about 9.44 acres, so that the land claimed by defendants in the Loucks case is not quite one-fifth of the acreage named in the patent.

The case is well within the rule that a meander line is not to be considered as a line of boundary, where the plat of survey shows a body of water as the boundary; but that there must be some absence of the body of water in the descriptions where shown on the plat, or another body of water which satisfies the natural object
224 shown, although misnamed, or a notation of intervening land, such as a marsh, so that the plat when applied to the ground shows either a clear mistake as to the existence of the natural object or a purpose not to call for it as a boundary.

The case of Michell v. Smale, 140 U. S. 406, 412, clearly demonstrates the above principle. There a fractional lot calling for 4½ acres was shown on the plat of survey as bounded by a lake. There was a point containing 25 acres outside of the meander lines, projecting into the lake. This 25 acres was subsequently surveyed by the Land Department and patented to another purchaser. The second patent was held invalid and the land decided to have been conveyed by the first patent. The court said:

"We think it a great hardship, and one not to be endured, for the Government officers to make new surveys and grants to the beds of such lakes after selling and granting the lands bordering thereon,

or represented so to be. It is nothing more nor less than taking from the first grantee a most valuable, and often the most valuable part of his grant. Plenty of speculators will always be found, as such property increases in value, to enter it and deprive the proper owner of its enjoyment; and to place such persons in possession under a new survey and grant, and put the original grantee of the adjoining property to his action of ejectment and plenary proof of his own title, is a cause of vexatious litigation which ought not to be created or sanctioned. The pretense for making such surveys, arising from the fact that strips and tongues of land are found to project into the water beyond the meander line run for the purpose of getting its general contour, and of measuring the quantity to be paid for, will always exist, since such irregular projections do always, or in most cases, exist. The difficulty of following the edge or margin of such projections, and all the various sinuosities of the water line, is the very occasion and cause of running the meander line, which by its exclusion of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream. The official plat made from such survey does not show the meander line, but shows the general form of the lake deducted therefrom, and the surrounding fractional lots adjoining and bordering on the same. The patents when issued refer to this plat for identification of the lots conveyed, and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water, regularly follow."

That acreage is not controlling in limiting the grant is clearly shown by the above case. There are many others of the same purport.

In Johnson v. Johnson, 24 L. R. A. (N. S.) (Idaho), 1251, the patent called for a tract of 86.06 acres. The natural object was held to be the boundary and to carry with it 143 acres.

Where the survey mentioned in a patent calling for 80 acres depicted a lake as a boundary, and the meander line did not coincide with the lake shore, the lake was decided to be the boundary and the patent was held to convey 100 acres lying between the meander line and the lake. Barringer v. Davis, 120 Iowa, 428, 120 N. W. 65.

See also Lindsey v. Hawes, 2 Black, 554, 560; Brown v. Huger, 21 How. 305; St. Clair v. Livingston, 23 Wall. 46, 63; Grand Rapids & Indiana R. R. Co. v. Butler, 159 U. S. 87; St. Anthony Falls Water Co. v. Board, etc., 168 U. S. 349; Chapman & Dewey v. St. Francis Levee District, 232 U. S. 186, 197.

The decisions holding the meander line to be one of boundary all recognize the general rule to be as above stated and rest on exceptions thereto. In the case of Horne v. Smith, 159 U. S. 40, the plat called for the Indian River as a boundary. There was a

226 watercourse where the plat depicted the river and the mistake was in calling it Indian River. It was held that this watercourse (not a meander line) was the boundary intended and that the patent did not include a large tract of land, never surveyed, which lay between the bayou and Indian River.

In Niles v. Cedar Point Club, 175 U. S. 300, the survey showed a tract of marsh or swamp lands beyond the meander line; the patent therefore was held to terminate at the meander line and not to carry the swamp lands lying between it and Lake Erie.

In the present cases the plat of survey shows nothing as the meander line but the shore line of Ferry Lake.

Where a plat called for a lake and there was no lake in front of the so-called meander line, but only one located outside of the side lines of the grant, it was held that the so-called meander line must be taken as the boundary instead of shifting the entire grant. French Glenn Live Stock Co. v. Springer, 185 U. S. 35.

Upon the same principle, coupled with evidence of the fraudulent character of the survey, there being no lake or body of water at or near the spot indicated on the plat of survey, rests the decision in Security Land & Exploration Co. v. Burns, 193 U. S. 182, and also Lee, Wilson & Co. v. United States, 245 U. S. 34.

The decision of the Supreme Court of the United States, in Producers Oil Co. v. Hanzen, 238 U. S. 325, affirming the decision
227 of the Supreme Court of Louisiana in 132 La. 691, lays down the general principle and illustrates the exceptions. There Bristol, a surveyor, made a survey of parts of section 3, 4, 9, and 10 of this township 20, and referred in his field notes to a spur of marsh extending "cut north." It was also admitted that the land in controversy was high land when the Bristol survey was made. This case establishes:

"As a general rule, meanders are not to be treated as boundaries, and when the United States conveys a tract of land by patent, referring to an official survey which shows the same bordering on a navigable river, the purchaser takes title up to the water line.

"Where the facts and circumstances, however, affirmatively disclose an intention to limit the grant to actual traverse lines, these must be treated as definite boundaries; and a patent to a fractional section does not necessarily confer riparian rights because of the presence of meanders.

"Where, as in this case, the survey of improved lands was made at the express request of the occupant to whom they were subsequently patented, and the grant specified the number of acres, and other circumstances also indicated that only the lands conveyed were those within the traverse lines, the patent of the United States conferred no riparian rights, but simply conveyed the specified number of acres."

That the Government has the right to make new surveys and correct errors in former ones does not in any way limit the above general rule or create a different rule where such new survey is made.

The right of the Government to make such new surveys is clear; but where the United States has previously parted with the title a new survey does not conclude a prior purchaser from asserting whatever title he has acquired by his older patent as against one claiming under the new survey. Cragin v. Powell, 128 U. S. 696; Hardin v. Jordan, 140 U. S. 371, 400; Mitchell v. Smale, 140 U. S. 406; Hardin v. Shedd, 190 U. S. 508.

228 This limitation on the effect of a new survey is recognized in the cases asserting the right of the Government to make it. Thus, in Kirwan v. Murphy, 189 U. S. 35, while the right to order a new survey is upheld, it is expressly stated that the right of the existing grantee could be thereafter asserted.

To the same effect is the decision in Lane, Secretary, v. Darlington, 249 U. S. 331.

We think that the present cases are governed by the general rule above laid down and that the patents to said section 27 convey all of the land to the waters of Ferry Lake.

The side lines of said section 27 terminate at the lake. The lake lies in the same relative position to said section, as the Warren plat of survey indicates. It lies from a few feet to less than a quarter of a mile distant from Warren's meander line as now laid on the ground on the new survey. The omitted land was at the time of little value and broken by ravines. There is no evidence of any intention to grant only to the traverse line, but the apparent purpose was to include all the land to the lake in the survey. That in each of these cases the meander line, according to its calls, is not to be treated as a boundary; but that the patents referring to an official plat which shows the land granted as bordering on the lake, the patentee took title to the water line.

The decree in each case is reversed on the appeal therein, with directions that the bill of complaint be dismissed by the District Court. Each cross appeal is dismissed.

(Original filed July 8th, 1921.)

229

JUDGMENT.

Extract from the minutes of July 8th, 1921.

CHARLES J. GREENE, JR., ET ALS.
versus
THE UNITED STATES OF AMERICA, ETC. } No. 3523.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this court, that the decree of the said District Court in this cause, be, and the same is hereby, reversed; and that this cause be, and it is hereby remanded to the said District Court with directions

to dismiss the bill of complaint; and that the cross appeal sued out herein be, and the same is hereby dismissed.

PETITION FOR APPEAL, AND ORDER ALLOWING SAME—FILED SEPTEMBER 19, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

CHARLES J. GREENE, JR., LOUISIANA OIL REFINING COMPANY, and Louisiana Oil Refining Corporation, appellants and cross appellees, *v.* UNITED STATES OF AMERICA, APPELLANTS AND CROSS appellant.	No. 3523.

To the honorable, the judges of the United States Circuit Court of Appeals in and for the Fifth Circuit:

Now into this honorable court comes the United States of
230 America, appellee and cross appellant, and says that on July 8, 1921, this court entered a decree herein in favor of appellents and cross appellees and against the United States of America, in which decree there was error greatly to the prejudice and injury of appellee and cross appellant, as will more fully appear by the assignment of errors, which is attached hereto and filed herewith.

Wherefore, the United States of America prays that an appeal may be allowed in said cause from this court to the Supreme Court of the United States and that proper orders for the allowance of such an appeal be made by this court.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

ORDER.

The foregoing petition for an appeal in the above numbered and entitled cause from the United States Circuit Court of Appeals of the Fifth Circuit to the Supreme Court of the United States being considered, and the assignment of errors being attached thereto and filed therewith, it is ordered:

That an appeal be granted and allowed in the above numbered cause to the United States of America as prayed for from the United States Circuit Court of Appeals of the Fifth Circuit to the Supreme Court of the United States.

Thus done and signed this 15th day of September, 1921.

(Signed) R. W. WALKER,
Judge, United States Circuit Court of Appeals, Fifth Circuit.

231 ASSIGNMENT OF ERRORS—FILED SEPTEMBER 19TH, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

CHARLES J. GREENE, Jr., LOUISIANA OIL REFINING COMPANY, and Louisiana Oil Refining Corporation, appellants and cross appellees,	No. 3523.
v.	
UNITED STATES OF AMERICA, APPELLEE AND cross appellant.	

Now comes the United States of America, appellee and cross appellant in the above numbered and entitled cause and in connection with the petition for an appeal herein presents this assignment of errors and says that the opinion and decree entered in this cause by the United States Circuit Court of Appeals of the Fifth Circuit on July 8, 1921, is erroneous in the following particulars, to wit:

1. The court erred in holding that the plat of survey of A. W. Warren represented Ferry Lake as a boundary of fractional section 27, whereas the court should have held that if said lake is shown upon said plat as a boundary it was indicated as such in connection with the meander line and as its location was established by said meander line.

2. The court erred in not holding that the record of said survey does not show that the lines thereof were run with the
231 meander or along the margin of said lape and that as actually made upon the grouond the lines of said survey were not run with the meander or along the margin of said lake.

3. The court erred in holding that the said plat of A. W. Warren does not show a meander line, and in not holding that said meander line was the boundary of the land in dispute.

4. The court erred in holding that the land in controversy was regarded as having been conveyed by the patent issued to the said Charles J. Greene, whereas the court should have held, as found by the master, that the said Greene made mineral locations upon the tract in suit and did not consider himself as the riparian owner thereof.

5. The court erred in holding that the Government conceded that the survey as a whole followed the contour of the lakes and made such lake the boundary, and did not dispute that as to the land sold by it in section 27 the survey referred to in the patent represented the lake as the boundary.

6. The court erred in not holding that the said tract was, at the time of and since said survey, high land in place, covered with native forest trees characteristic of hill land, and was of the same character, geological formation and quality as the lands included by said Warren in his survey.

7. The court erred in not holding that there was manifest error in said survey or a material variation between the meander line thereof and Ferry Lake; that said survey did not follow or approximate the lake shore or its sinuosities; that it was run without reference to the contour of said lake over well timbered high lands averaging 25 feet above the level of the lake, and into and across deep ravines, disregarding the natural bluff along the shore line as well as the mean high water elevation of the lake; that there was no justification or excuse in the topography of the ground or otherwise for the establishment of said meander line in the position and at the elevation at which it was run, and that said line was false and misleading and did not afford reliable means of ascertaining the quantity of land in said fractional section.

8. The court erred in not holding that, inclusive of the land in suit, the said A. W. Warren omitted from his survey of the township 987.77 acres of high land in place between the so-called meander line and the mean high water elevation of Ferry Lake as it existed when the State of Louisiana was admitted into the Union and when said survey was made, and which mean high water elevation was known to said surveyor.

9. The court erred in failing to hold that the tract in controversy was not included in said survey either in fact or in law, and was not described or embraced in the patent relied upon by defendants.

10. The court erred in holding that there was no disputed issues of fact and in overruling the findings of fact made by the master in chancery herein and approved by the district judge, including the finding that the land in suit was left unsurveyed by the said A. W. Warren and belonged to the public domain of the United States.

11. The court erred in reversing the decree of the District Court insofar as same was favorable to the United States and in remanding said cause to the District Court with directions to dismiss the bill of complaint.

12. The court erred in dismissing the cross appeal and in not reversing the decree of the District Court insofar as it allowed the defendants to offset the cost of drilling the wells against the value of the oil extracted from the land in suit, and in not remanding said cause with directions for the entry of a decree in favor of plaintiff for the full value of the oil, less only the expenses incurred by defendants in operating the wells.

Wherefore the United States of America, appellee and cross appellant, prays that the opinion and decree of the United States Circuit Court of Appeals for the Fifth Circuit be reversed; that the decree of the District Court be affirmed insofar as it is favorable to the United States of America; that the said cause be remanded with directions for the entry of a decree in favor of the United States of America for the full value of the oil taken by defendants

from said land, less only the cost of operating the wells, and excluding and disallowing as an offset or credit against the value of said oil the sums expended or costs incurred by defendants in drilling said wells, to the end that the United States may recover the value of said oil free of all costs incurred in discovering or reaching the same, and for general relief.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

235 STIPULATION AS TO RECORD—FILED SEPTEMBER 19TH, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

CHARLES J. GREENE, JR., LOUISIANA OIL REFINING Company, and Louisiana Oil Refining Corporation, appellants and cross appellees,
v.
UNITED STATES OF AMERICA, APPELLEE AND CROSS appellant.
} No. 3523.

With regard to the appeal taken in the above numbered and entitled cause by the United States to the Supreme Court of the United States it is stipulated by counsel for all parties as follows, to wit:

1. That the transcript of appeal shall be made up of *of* the printed record filed in the United States Circuit Court of Appeals, with the addition thereto of the proceedings had in said Court of Appeals.

2. That the transcript of appeal in case No. 3522 entitled Jeems Bayou Fishing & Hunting Club et al., v. United States of America (No. 407 on the docket of the Supreme Court of the United States), together with all the maps, plats, exhibits, and documents made a part thereof, or sent up to the Supreme Court of the United States in the original in connection therewith, shall be deemed and considered as a part of the transcript in the above numbered and entitled cause, in so far as applicable to the issues in such cause, to the same extent and with the same effect as if formally incorporated in the transcript in this cause.

236 Thus done and signed this 17th day of September, 1921.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

(Signed) S. M. COOK,
Attorneys for C. J. Greene, Jr.

(Signed) BLANCHARD, GOLDSTEIN & WALKER,
Attorneys for Louisiana Oil Refining Co., and Louisiana Oil Refining Corporation.

STIPULATION AS TO TRANSMISSION OF ORIGINAL EXHIBIT—FILED SEPTEMBER 22, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

CHARLES J. GREENE, JR., LOUISIANA OIL REFINING Company, and Louisiana Oil Refining Corporation, appellants and cross appellees, *v.* UNITED STATES OF AMERICA, APPELLEE AND CROSS appellant.	No. 3523.

It is agreed that the abstract of title, compiled by the Caddo Abstract Company, which was offered in evidence by defendants in the District Court and sent up in the original to the Court of Appeals, shall be transmitted by the clerk of the United States Circuit Court of Appeals to the Supreme Court of the United States as a part of the record on appeal in said cause.

237 Thus done and signed this 20th day of September, 1921.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

(Signed) COOK & COOK,
BLANCHARD, GOLDSTEIN & WALKER,
Attorney for Charles J. Greene, jr.

(Signed) BLANCHARD, GOLDSTEIN & WALKER,
Attorneys for Louisiana Oil Refining Co., and Louisiana Oil Refining Corporation.

CLERK'S CERTIFICATE.

United States of America, United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 215 to 237 next preceding this certificate contain full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said court, numbered 3523, wherein Charles J. Greene, jr., Louisiana Oil Refining Company, and Louisiana Oil Refining Corporation, are appellants and cross appellees, and the United States of America as appellee and cross appellant, as full, true, and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 214 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

238 I further certify that defendant's Exhibit No. 1, abstract of title, forwarded to this court in the original, is transmitted

herewith to the Supreme Court of the United States in the original, as per stipulation of counsel copied at page 236 of this record.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the city of New Orleans, Louisiana, in the Fifth Circuit, this 29th day of September, A. D. 1921.

[SEAL.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

239 The United States of America, the President of the United States.

To Charles J. Greene, jr., Louisiana Oil Refining Company, and Louisiana Oil Refining Corporation, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a petition and order of appeal and assignment of errors sued out and filed in the clerk's office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein Charles J. Greene, jr., Louisiana Oil Refining Company, and Louisiana Oil Refining Corporation are appellants and cross appellees, and the United States of America is appellee and cross appellant, bearing the number 3523 on the docket of the United States Circuit Court of Appeals for the Fifth Circuit, to show cause, if any there be, why the decree rendered against the said the United States of America, and in said petition and order of appeal and assignment of errors mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Howard Taft, Chief Justice of the United States, this 15th day of September, in the year, of our Lord one thousand nine hundred and twenty-one.

[SEAL.]

R. W. WALKER,
United States Circuit Judge.

Service of the within citation of appeal accepted and acknowledged this 17th day of September, 1921.

S. M. COOK,
Attorneys for C. J. Greene, Jr.

BLANCHARD, GOLDSTEIN & WALKER,
Attorneys for Louisiana Oil Refining Company, and Louisiana Oil Refining Corporation.

(Endorsed on cover:) No. 3523. In the United States Circuit Court of Appeals, Fifth Circuit. Charles J. Greene, jr., et als., appellants and cross appellees, versus The United States of America, appellee and cross appellant. Citation, and acceptance of service. Filed 19th day of September, 1921. Frank H. Mortimer, clerk of the United States Circuit Court of Appeals.

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In the Supreme Court of the United States.

OCTOBER TERM, 1922.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
CHARLES J. GREENE, JR., LOUISIANA OIL REFINING COMPANY, AND LOUISIANA OIL REFINING CORPORATION. } No. 192.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

THE PLEADINGS.

The lands in controversy in this suit are lots 2 and 3 in the northwest fractional quarter of section 27, lot 2 containing 29.34 acres and lot 3, 36.43 acres, a total of 65.77 acres. These lots were surveyed by Kidder in 1916–17, the official plat of the survey being approved March 28, 1917. In its bill of complaint the United States alleged in brief that it was and still is the owner of these lots; that on December 15, 1908, the President withdrew from settlement and entry and from all other forms of

appropriation all of the public lands in certain designated townships, including the township in which this section lies; that on July 2, 1910, the President, under the act of June 25, 1910 (36 Stat. 847), ratified and continued in full force the previous withdrawal order; that notwithstanding, the defendants, without any valid right, in bad faith, took possession and drilled a well, from which oil was taken; that the oil was extracted under color of a pretended claim of ownership; and that none of the defendants has any right, title, or interest, etc. Appropriate relief was prayed for (5).

It will be unnecessary to refer separately to the various answers. It is enough to say that while the defendants admit taking possession and extracting the oil, they deny that the land belongs to the United States. On the contrary, they allege ownership under a patent to the fractional northwest quarter of section 27 (33). This patent apparently is not printed in the record, but it is frequently referred to and was treated by all parties as before the court (74, 80, 126, 197, 216). It is probably contained in the abstract of title which the defendants introduced (192) and which forms a part of the record on appeal (212). It is undisputed that the patent, which is based on the official survey, refers to the official plat of Warren's survey which was approved August 31, 1839 (126). The patent evidently embraces the fractional northwest quarter and the west half of the southwest quarter, the total acreage being 147.25 (197). According to Warren's

plat of survey, which was introduced in evidence, the southwest quarter contains 158.50 acres and the fractional northwest quarter 68 acres. The patent which was apparently issued to Greene on October 2, 1911 (80), therefore embraces approximately 79.25 acres, constituting the west half of the southwest quarter, and 68 acres in the fractional northwest quarter, these two areas producing 147.25 acres, the number apparently called for in the patent (197). As already stated, the acreage of lots 2 and 3, constituting the lands in controversy, amounts to 65.77 acres, lying in the fractional northwest quarter. Under a patent thus conveying the fractional northwest quarter, represented, according to the official survey, to contain 68 acres, the defendants assert title to the additional 65.77 acres which adjoin the 68 acres on the ground that the patent, based as it was on the plat of the official survey of 1839, operated to convey everything in the fractional northwest quarter, and therefore to pass title to the water's edge.

The master, to whom the case was referred, found in favor of the Government (42, 74). His report was confirmed (85) and a decree entered accordingly (89). The Circuit Court of Appeals reversed the decree and ordered the bill dismissed (215), whereupon an appeal was taken to this court (223).

THE FACTS.

This case was tried along with a similar case, *United States* v. *Enders et al.*, District Court No.

1160, involving title to certain lands in section 9, which it was also claimed by the Government were erroneously omitted from Warren's survey. The *Enders* case, however, is not before this court. At the trial of these consolidated cases a stipulation was entered into to the effect that the evidence introduced in the case of *United States* v. *Jeems Bayou Fishing & Hunting Club et al.* (No. 119 in this court) should be treated as a part of the record (105). With our brief in that case already before the court, where the facts are stated at length, it will be unnecessary to indulge in any repetition. It will only be necessary to refer to the additional facts developed on the trial of this suit.

Although the tract in controversy, which it is claimed by the Government was erroneously omitted from Warren's survey, embraces 65.77 acres, it forms a part of a larger tract, all of which it is claimed by the Government was erroneously omitted. This additional area consists of lot 1 (the Court of Appeals erroneously refers to it as lot 4) of section 27, comprising 14.13 acres; lot 1 of section 23, comprising 1.13 acres; and lot 2 of section 23, comprising 16.61 acres. In other words, the total area in this immediate locality omitted from the Warren survey is 97.64 acres. As indicated by the testimony in the *Jeems Bayou Fishing & Hunting Club* case (No. 119), the total area left out of the Warren survey was 988.77 acres. When Boyd resurveyed, in 1854, sections 31 and 32 he found that Warren had omitted

in those sections 90.41 acres; when Bristol surveyed, in 1871, certain lands in sections 4, 9, and 10 he found that Warren had omitted in those sections from his survey 280.12 acres; and when Kidder executed his survey in 1916–17 he found that Warren had omitted in various sections in the township another 617.21 acres. The 97.64 acres mentioned above form a part of the 617.21 acres which Kidder surveyed, the official plat of which was approved, as already stated, on March 28, 1917.

Coming, now, to Warren's so-called meander line across section 27, which we claim to be altogether erroneous, we find many interesting facts developed by the testimony, all of which demonstrate its incorrectness. The land in controversy reaches an elevation 37 feet higher than the 173.09 contour (117). The average height of the omitted land is about the same as that included in Warren's fractional northwest quarter, and there is not the slightest difference in the general character of the land lying on either side of Warren's traverse line (117). This meander line traverses upland throughout its entire course, and there is no place where it approaches the border of Ferry Lake (118). Its average elevation is 25 feet above the 173.09 contour (120). Warren began his traverse line at the meander corner on the eastern boundary of section 27 and terminated it on the western boundary of that section. On this line there are eight angle points, numbered 1 to 8, inclusive, marking the turning points. Angle points 7 and 8

are in the fractional northwest quarter (135). There is nothing on the ground to justify these turns. Angle points 7 and 8 are in the forest, at a high elevation above the lake, being in the vicinity of 27 feet above the lake level, and so far removed from the actual border of the lake that there is no occasion for making an angle point at either of these places (135). His traverse line at these two points is just an irregular line that might be run through the woods and does not agree with any topographical features of any kind. It does not follow the contour of the lake, nor does it mark the shore at all (136). Between angle points 7 and 8 the average distance to the border of Ferry Lake is about 1,000 feet (118). Along the seventh meander course the average distance to the lake is 1,100 feet, and the nearest distance of the meander line through the fractional northwest quarter to the lake is at a right angle 900 feet away (122). Although Kidder, as indicated on his plat of survey, found 15.26 acres in section 23, Warren's survey does not show any land in that section at all (125, 136).

His traverse line through the fractional northwest quarter can not be considered a correct meander line in the sense that it represents the border of Ferry Lake, and the line does not conform to any of the several requirements of a meander line as set forth in surveying rules. In running his traverse line at the elevation and in the direction in which he did, his survey is very much in error. His meander line

through section 27 is manifestly an error as determined by every test that can be given (124). His meander line through the fractional northwest quarter does not conform to surveying rules, nor does it mark the sinuosities of Ferry Lake (128). His meander line does not follow the contour, nor does it conform to the sinuosities of the shore line. It cuts across deep ravines nearly a quarter of a mile from the lake, and in no way can be construed to represent the meander line of Ferry Lake. If it was intended as a meander line of that lake, it is absolutely incorrect and the error manifest. There is nothing on ground itself that would have prevented Warren from running his line along the proper contour. In fact, it would have been easier to run along the proper contour than to cut across, as he did, the highland, through heavy timber and undergrowth (142). The length of his meander line in section 27, from angle point No. 5 (which is almost at the margin of the lake) to the meander corner on the west side of section 27 is 4,804.8 feet, approximately twelve-thirteenths of a mile (145), while the length of Kidder's meander line from angle point No. 9 (which is apparently about the same as angle point No. 5 just mentioned), through section 27 to the meander corner of that section on its west side, on the 173.09 contour, is 6,311.38 feet, or approximately 1¼ miles (146). Warren's meander line does not follow the shore (143) and is manifestly incorrect (161). It was run without reference to

the lake and is manifestly incorrect (169). This testimony came from several witnesses and the evidence was undisputed.

In this case, as well as in the other *Ferry Lake* cases, the question naturally arises as to how the elevation of the lake was determined when Louisiana was admitted to the Union in 1812 and when Warren surveyed in 1839. As indicated in the record in the *Jeems Bayou Fishing & Hunting Club* case (No. 119), Kidder found that Warren had terminated his *section* lines at the actual edge of the lake, which was the 173.09 contour. Kidder then placed posts all around the margin of Ferry Lake at this elevation, and the geologists and ecologists found from geological and ecological evidence that this was the elevation of the lake at that time. Inasmuch as this evidence is not disputed, it is unnecessary to refer to the testimony which establishes this fact.

Another significant fact which was developed in the testimony was that Greene himself, the patentee, treated his title under the patent as stopping at the traverse line as actually run by Warren, for he made mineral locations on ground lying between that traverse line and the actual edge of the lake. These mineral locations were introduced in evidence, one bearing date June 10, 1910, one June 17, 1910, and one January 22, 1913 (192). They are produced in full at pages 203–206. In referring to these mineral locations the master said that "Greene virtually acknowledged that this land was not his property. He made on January 22, 1913, a mineral location

embracing the fractional northwest quarter of section 27, between the traverse line and the lake. In this location the land is referred to as 'unsurveyed.' He did the same on June 17, 1910, 'for all lands below the United States traverse in NW. ¼ sec. 27.' No effort to develop the land under this location was made, but this instance shows he did not consider that he was the riparian owner of the area in dispute" (75).

The evidence with respect to the amount of oil taken out and its value was undisputed (190). A tabulated statement will be found at pages 194, 195. The Amateur Oil Company drilled the well and operated it from August 10, 1916, when it began to produce, until May 15, 1917. The oil taken out during this period amounted to $3,171.53, but the cost of drilling amounted to $6,194.78 and the cost of operating to $834. The Louisiana Oil Refining *Company* and the Louisiana Oil Refining *Corporation* operated the well from May 16 to December 31, 1917, the value of the oil taken being $1,485.17, and the cost of operation amounted to $741.74 (190). It was stipulated that the Louisiana Oil Refining Corporation, which was not made a party, would respond to any judgment which might be rendered without being made a formal party (191). A judgment was, however, rendered against it, and it joined in the appeal.

The District Court allowed the defendants credit for the cost of drilling and operating, and rendered judgment as shown at pages 90, 91, and decreed the property in question to belong to the United States.

ASSIGNMENTS OF ERROR.

It will be unnecessary to reproduce from the transcript the assignments of error (224). The Circuit Court of Appeals, having reversed the decree of the District Court and having ordered a dismissal of the bill, found it unnecessary to consider the measure of damages. The assignments in brief present two contentions:

1. That the Court of Appeals was wrong in adjudging the property in dispute to belong to the defendants; or, to state it in another form, in holding that the patent to Greene, embracing the fractional northwest quarter of section 27, containing 68 acres, according to the plat of survey, operated to pass title to the water's edge, thereby giving the patentee title to an additional 65.77 acres.

2. If the Court of Appeals was wrong in thus disposing of the case, then the District Court was wrong in allowing the defendants credit for the cost of drilling. Our assignments of error in the Court of Appeals took a broader scope, challenging, as they did, the action of the trial court in allowing the defendants credit for the cost both of *drilling* and of *operation*. In this court, however, we challenge the action of the District Court only in so far as it allowed the defendants credit for the cost of *drilling*.

ARGUMENT.

IN VIEW OF OUR BRIEFS IN THE OTHER FERRY LAKE CASES NOW BEFORE THE COURT, WHERE THE SAME QUESTION OF LAW IS INVOLVED, WE CONTENT OURSELVES WITH SAYING THAT THE EVIDENCE UNMISTAKABLY SHOWS THAT A FLAGRANT AND PALPABLE ERROR WAS COMMITTED BY WARREN IN HIS SURVEY OF 1839, ENTITLING THE GOVERNMENT, UNDER A LONG LINE OF AUTHORITIES, TO THE RELIEF WHICH IT SEEKS.

Horne v. *Smith*, 159 U. S. 40.
Niles v. *Cedar Point Club*, 175 U. S. 300.
French-Glenn Live Stock Co. v. *Springer*, 185 U. S. 47.
Security Land & Exploration Co. v. *Burns*, 193 U. S. 167.
Chapman & Dewey v. *St. Francis*, 232 U. S. 186.
Producers Oil Co. v. *Hanzen*, 238 U. S. 325.
Lee Wilson & Co. v. *United States*, 245 U. S. 24.

THE RULE IS OF COURSE UNDISPUTED THAT ORDINARILY A PATENT TO A FRACTIONAL SECTION BORDERING ON A NAVIGABLE STREAM PASSES TITLE TO THE WATER'S EDGE. BUT THIS COURT IN ANNOUNCING THIS VERY RULE HAS RECOGNIZED THAT IT NECESSARILY HAS ITS LIMITATIONS.

Railroad Co. v. *Schurmeir*, 7 Wall. 272.
Producers Oil Co. v. *Hanzen*, 238 U. S. 325.
Mitchell v. *Smale*, 140 U. S. 406.

In the last-named case the court says:

> We do not mean to say that in running a pretended meander line the surveyor may

> not make a plain and obvious mistake, or be guilty of a palpable fraud, in which case the Government would have the right to recall the survey and have it corrected by the courts, or in some other way. Cases have happened in which, by mistake, the meander line described by a surveyor in the field notes of his survey did not approach the water line intended to be portrayed. Such mistakes, of course, do not bind the Government.

But the court continued:

> In the present case it can not be seriously contended that any palpable mistake was made, or that any fraud was committed, by the surveyor who made the survey in 1834–5.

The undisputed testimony in this case, on the contrary, establishes, we submit, that a flagrant and palpable error was committed by Warren.

THIS COURT SEEMS TO BE COMMITTED TO THE DOCTRINE THAT A MEANDER LINE TO BE BINDING MUST REASONABLY APPROXIMATE THE SHORE LINE.

In *Gauthier* v. *Morrison*, 232 U. S. 452, this language is used:

> It will be perceived that we are not speaking of land which was covered by a permanent body of water at the time of the survey and thereafter was laid bare by a subsidence of the water, nor yet of comparatively small areas which sometimes lie within meander lines *reasonably approximating the shores of permanent bodies of water.*

This seems to be a plain recognition of the fact that the decisions of this court, in applying the general

rule already referred to that a stream and not a traverse line is the true boundary, as exemplified in the two leading cases of *Railroad Co.* v. *Schurmeir, supra*, and *Mitchell* v. *Smale, supra*, unmistakably proceed upon the theory that the traverse lines there under consideration did in fact *reasonably approximate the water's edge*. In these cases, however, the undisputed testimony establishes that Warren's so-called meander or traverse line in no sense reasonably approximates the water's edge.

THE FACT THAT IN MITCHELL v. SMALE, 140 U. S. 406, THIS COURT HELD THAT A PATENT EMBRACING A FRACTIONAL QUARTER CONTAINING ONLY 4.53 ACRES, NEVERTHELESS OPERATED TO PASS TITLE TO THE WATER'S EDGE AND THEREFORE TO INCLUDE AN ADDITIONAL 25 ACRES, SEEMS TO HAVE MEASURABLY INFLUENCED THE COURT OF APPEALS IN DECIDING AGAINST THE GOVERNMENT. IT IS SUBMITTED, HOWEVER, THAT CASES OF THIS SORT ARE NOT TO BE DECIDED ON A COMPARISON OF AREAS, BUT UPON THE FUNDAMENTAL PROPOSITION WHETHER THE MEANDER LINE REASONABLY CONFORMS TO THE MARGIN OF THE LAKE.

The later decision in *Producers Oil Co.* v. *Hanzen*, 238 U. S. 325, certainly does not proceed upon the theory that cases of this sort are to be determined merely by a comparison of areas. It affords no basis for the proposition that this court ever intended to lay down the rule that if the area erroneously omitted is no greater than approximately six times the area included, the patent carries title to the water's edge. In that case the area of lot 1,

which the patent embraced, was 12.84 acres. The area of the adjoining land in dispute was, according to one survey, 40 acres, and according to another, 87 acres. The discrepancy in acreage was a factor, along, of course, with others, which led this court to the conclusion that the patent did not pass title to the disputed tract. The whole reasoning in that case is inconsistent with the notion that the doctrine to be deduced from *Mitchell* v. *Smale* is that cases of this sort are to be determined by a comparison of areas. The only logical course which this court can take is, we submit, that cases of this sort are to be determined by the application of a simple test—whether the meander line reasonably approximates the margin of the lake. Besides, the field notes of *Mitchell* v. *Smale* affirmatively disclose that the surveyor was attempting to meander the lake.

THERE IS NO MERIT IN THE CONTENTION THAT THE GOVERNMENT IS ESTOPPED TO PROSECUTE THIS SUIT BY REASON OF THE LETTER WRITTEN BY THE COMMISSIONER OF THE GENERAL LAND OFFICE TO SENATOR BLANCHARD OR BY REASON OF THE LETTER OF THE DIRECTOR OF THE GEOLOGICAL SURVEY TO THE SECRETARY OF THE INTERIOR.

Utah Power & Light Co. v. *United States*, 243 U. S. 389.

Lee Wilson & Co. v. *United States*, 245 U. S. 24.

THE DEFENSE OF LACHES IS NOT AVAILABLE.

United States v. *New Orleans Pac. Ry. Co.*, 248 U. S. 507.

United States v. *Southern Pacific Co.*, Adv. Op., May 29, 1922.

THE DISTRICT COURT WAS WRONG IN ALLOWING THE DEFENDANTS CREDIT FOR THE COST OF DRILLING THE WELL.

As already indicated, the Government's assignments of error in the Court of Appeals assailed the action of the District Court in allowing the defendants credit for both the cost of *drilling* and of *operation*. The assignments of error in this court simply challenge the action of the District Court in allowing credit for the cost of *drilling*. Inasmuch as our brief in consolidated cases Nos. 117, 104, 111, 112, 113, 114, 115, and 116 goes at length into the question of the proper measure of damages, we think it unnecessary to repeat the argument here, particularly because some of the counsel appearing in those cases also appear here. The following cases sustain our contention:

United States v. *St. Anthony R. R. Co.*, 192 U. S. 524.

United States v. *Midway Northern Oil Co.*, 232 Fed. 619, 633.

United States v. *McCutchen*, 238 Fed. 575, 593, 594.

St. Clair v. *Cash Gold Min. & Mill. Co.*, 9 Colo. App. 235, 241; 47 Pac. 466, 468.

Hall v. *Abraham*, 44 Ore. 477, 481; 75 Pac. 882, 883.

Martin v. *Porter*, 5 Mees. & W. 351 (1839).
Morgan v. *Powell*, 3 Q. B. 278 (1842).
Llynvi Co. v. *Brogden*. L. R., 11 Eq. 188 (1870).

THE UNITED STATES, WITH RESPECT TO THE MEASURE OF DAMAGES, IS NOT BOUND BY STATE LAW OR DECISIONS.

It is well settled that the United States is not bound by State statutes of limitation; and if the Government sues and a balance is found in favor of the defendant, no judgment can be rendered against the United States either for that balance or for costs. *United States* v. *Thompson*, 98 U. S. 486.

It has also been held that the statute of a State requiring landowners to fence their lands does not apply to the United States; that the federal Constitution has delegated to Congress without limitation the power to dispose of and make all needful rules and regulations concerning the public domain; and that the exercise of that power can not be restricted or embarrassed in any degree by state legislation. *Shannon* v. *United States*, 160 Fed. 870. See also *Utah Power & Light Co.* v. *United States*, 243 U. S. 389.

Such being the law, no reason appears why the Government should be bound by such laws in fixing the measure of damages for trespasses on its public lands.

In *Woodenware Co.* v. *United States*, 106 U. S. 432, which lays down the rule governing the measure of damages in cases of trespass, it is said that in the

case of a willful trespass the trespasser is liable for the full value of the property taken without allowance for expenditures made by him. In that case the court said (p. 434):

> There seems to be no doubt that in the case of a willful trespass the rule as stated above is the law of damages both in England and in this country, though in some of the State courts the milder rule has been applied even in this class of cases. Such are some that are cited from Wisconsin.

It should be observed that the *Woodenware* case arose in Wisconsin, and this court referred to the milder rule in that state, which it did not see fit to follow but followed the rule prevailing generally in this country and in England.

The decree of the Court of Appeals, it is submitted, should be reversed.

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DEC 11 1922
WM. R. STANSB
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1922

No. 192

THE UNITED STATES OF AMERICA,
Appellant,

Versus

CHARLES J. GREENE, JR., LOUISIANA OIL REFINING COMPANY, AND LOUISIANA OIL REFINING CORPORATION,
Appellees.

Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.

ORIGINAL BRIEF FOR DEFENDANTS AND APPELLEES.

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Sixteen (16) West, containing an aggregate of 65.77 acres, and alleging that the defendants, Charles J. Greene, Amateur Oil Company and the Louisiana Oil Refining Company wrongfully and without any right whatsoever have entered on said tracts, drilled a well thereon and extracted oil therefrom. The prayer of the petition is for the recognition of the title of the United States, for an injunction restraining the defendants from further trespassing and taking of oil from the land and for an accounting for oil already taken.

The answers of all of the defendants are in substance the same, and in them the defendants deny the existence of any such tracts of land as Lots Two (2) and Three (3) of Section Twenty-seven (27), Township Twenty (20) North, Range Sixteen (16) West, and aver that the land so described is a part of Fractional Northwest Quarter (NW¼) of Section Twenty-seven (27), Township Twenty (20) North, Range Sixteen (16) West, which was acquired by defendant, Charles J. Greene, by patent from the United States under its homestead laws prior to the making of the survey, which attempted to create out of defendant's land the aforesaid lots. Defendants further aver that the Fractional Northwest Quarter (NW¼) of Section 27, Township 20 North, Range 16 West, borders on and adjoins Ferry Lake, a navigable body of water, and "that at the date of the issuance of said patent, in accordance with the official field notes and plat of survey of said General Land Office aforesaid, and the entry thereof, by defendant patentee, the same bordered on said lake, a navigable body of water,

and that said lake, or navigable body of water, was and is the boundary line of said Fractional Northwest Quarter of Section 27, Township 20, Range 16, of Caddo Parish, Louisiana, aforesaid, and that the same was not bounded by any meander line; the actual boundary line of said Fractional Northwest Quarter of Section 27, as patented by the United States to defendants, bordering on said navigable body of water, extended and was and is bounded and limited, by the ordinary or mesne high water of said Ferry Lake, at the time of the admission of the State of Louisiana into the Union, leaving no land in the ownership of the United States between said meander line and the ordinary high water line of said lake, or navigable body of water, and that the Department of the Interior was without jurisdiction, power, or authority to cause said tracts of land, in controversy, to be surveyed."

Defendants further aver that the United States had, prior to the bringing of the aforesaid suit, disclaimed any ownership of the land that it is now suing for, and that defendant, Greene, acquired same in good faith and upon the strength of the official and approved survey made by the officers of the United States showing the land patented to him to front and abut on Ferry Lake.

Defendants pray for the rejection of plaintiff's claim, and, in the alternative, that if the plaintiff's ownership of the land should be recognized, defendants pray for reimbursement of the expenses and costs incurred by them in drilling for and producing oil from the land.

In the District Court there was judgment in favor of the United States, recognizing it as the owner of the land and ordering the defendants to account for the value of the oil taken from it, less a part of the cost of drilling the well. The Circuit Court of Appeals reversed the judgment and dismissed the suit, from which decision the United States has appealed to this Court.

THE FACTS.

The facts of the case as found by the Circuit Court of Appeals are thus stated in its opinion:

> "The entire township 20 was originally surveyed by one Warren, in 1839. His plat of township 20 showed Ferry Lake as the northerly boundary of fractional lot 27. No land is indicated on said plat as lying between the meander line of said lake and the waters thereof. In 1908 the presence of oil in adjacent territory caused the President to withdraw all lands of the United States in this and other townships from any manner of appropriation, and a resurvey of this township was directed where it bordered on Ferry Lake and its arms. This survey determined that the mean high water level of Ferry Lake at the time of said Warren survey in 1839, as well as in 1812, when Louisiana became a State, was 173.09 feet above the gulf level. That Warren so recognized it and that his section lines terminated at the lake at this elevation, but that in meandering the shore of said lake in front of said section 27 Warren's courses and distances do not follow the shore of the lake, but run over high ground which, at its farthest point is about 1200 feet from the true shore line. The omitted land is intersected with

several ravines running to Ferry Lake. It contains 97.64 acres divided into lots 2, 3 and 4 of section 27 and fractional section 23, as per said plat of survey of March 28, 1917; the lots 2 and 3 contain 65.77 acres; No. 4 contains 14.13 acres and section 23, 17.44 acres. The acreage of section 27 as surveyed by Warren in 1839 was 468.87 acres. The acreage claimed by the defendants in case No. 3523 to be included in the Warren survey and the patent thereunder under which they claim is that in lots 2 and 3 and about ½ of the 16.61 acres described as the fractional section 23 in the Kidder survey, or 74.08 acres. That claimed by the defendants in No. 3525 is lot No. 4 of section 27 and the rest of said fractional section 23, or 23.56 acres. While these suits involve no part of the land described as section 23, the title to the acreage is necessarily disposed of by the decision of these cases.

"The cases were referred to a master, who took testimony and made a report, finding that the land in controversy had been omitted from the Warren survey by manifest error, and that the government was the owner thereof. He also found that the government was entitled to recover the value of the oil received therefrom, less all costs of extracting the same. The defendants excepted to the report, and the government to so much thereof as allowed to defendants the cost of raising said oil.

"The Court overruled all exceptions and rendered a decree in favor of the government, in accord with the master's report.

"The defendants appealed, assigning error in the finding that the government was the owner of the land, and the government has taken a cross appeal

from the finding that defendants were to be credited with the cost of raising said oil.

"There was no dispute as to the facts. The only evidence on which the master predicated his finding that the patents, including the northwest and northwest fractional quarters of said section 27 did not cover the land sued for by the government, was that the resurvey of township 20 by Kidder and a reproduction of the meander line of the Warren survey, according to the calls in Warren's field notes, did not follow the ordinary high water elevation of 173.09 feet above gulf level, but ran over high ground at distances varying from a few feet to about ¼ of a mile from said 173.09 feet contour. Warren's plat does not show any meander line, but gives the waters of Ferry Lake as the boundary of the fractional sections bordering thereon. The section lines of these sections are conceded to reach the ordinary high water level, as determined by Kidder and the scientific experts to have existed at the time of Warren's survey.

"Kidder's survey was made for the purpose of marking the ordinary high water level of Ferry Lake in 1839, at the time of Warren's survey. This elevation was determined by careful examination and by ecological and geological experts, and a meander line carefully run at 173.09 feet above gulf level, that having been fixed as the ordinary high water level existing in 1839.

"The plat of this survey also traces the meander line as given by the calls of Warren's field notes.

"Both meander lines thus marked, beginning on the west side of section 27, were generally in a

northeast direction to the most northerly point of the land on the south shore of Ferry Lake, as marked on the Kidder and Warren plats, respectively, and then run in a southerly and southeasterly direction to section 26 on the east.

"The additional land shown on Kidder's plat is a strip bounded on the north by a broken line, forming roughly an arc, with the courses of Warren's meander line as its chord. Its greatest width is about one-quarter of a mile; its length is about one mile.

"The evidence shows that the land in controversy was regarded as conveyed by said patents; that parts of it were cultivated and a dwelling house was erected on the part sued for in the Greene case, near the lake. The Warren plat referred to in said patents indicated Ferry Lake as the northern boundary of the land conveyed by each patent.

"The only apparent reason for the departure of the traverse line from the shore of the lake is that the land was broken with ravines running down to the lake; that these ravines in times of very high water were partially flooded and the convenience of the surveyor may have occasioned a failure to follow the water level, the land left out being at the time of little value. In other parts of this survey the Warren meander line, as reproduced by Kidder, in places runs into the lake and includes within its calls, as land, small portions of the lake.

"There is no suggestion of any purpose on the part of Warren not to include all the land up to the water of the lake in this section as surveyed; and if the land described in the Kidder survey as outside

of Warren's traverse line, in section 27, is included it still leaves section 27 a fractional section.

"The evidence of the government to the effect that the traverse line was a manifest error is only the expression of an opinion, based solely on the fact that it runs from the margin of the lake on high ground in the meander heretofore described. This opinion is based on an absence of explanation given for the discrepancy, and not on any evidence of an intention to make the line one of boundary, and to depart from the general rule. It is conceded that the survey as a whole (except in the case where a large tract was clearly omitted where Jeems Bayou and Ferry Lake unite) follows generally the contour of the lake and makes the lake the boundary.

"It is also not disputed that as to the land sold by the government in section 27 the survey referred to in the patent represented the lake as its boundary."

The facts as thus stated by the Circuit Court of Appeals are plain from the record, and are incontrovertible. The statement needs no elaboration and we shall attempt none. We may, however, summarize the facts as thus found by stating that the evidence in the case plainly shows that at the time Greene settled on the land and at the time he obtained his patent the only existing survey of the land in question was the official plat of township 20 north, range 16 west, Louisiana Meridian, approved August 31, 1839, delineating the survey of A. W. Warren; that this survey and map show the fractional Northwest Quarter of Section 27 to border on Ferry Lake; that Greene intended to acquire the land bordering on Ferry Lake and thought that

he had acquired it under his patent; that he built a house upon it, cultivated a portion of it and planted an orchard upon it and treated it as his own; that according to the testimony of the plaintiff's own witnesses the total area claimed to have been omitted from Warren's survey of Sections 27 and 28, as determined by the exact calculations of the government surveyors some eighty years afterwards, was the insignificant amount of 97.64 acres, and that the land which it is asserted was omitted from Warren's survey is broken by ravines and was at the time of Warren's survey worthless.

ARGUMENT.

If Your Honors Please:

From the foregoing statement of facts, as disclosed by the record and as found by the Circuit Court of Appeals, it is apparent that the meticulous resurveys made by Kidder, who was the United States Supervisor of Surveys, and by his associates, show neither fraud nor gross error in the Warren survey of the tract of land involved in this suit, nor in his survey as a whole of the land adjacent to Ferry Lake. On the contrary, when the conditions under which Warren was compelled to work are considered in connection with the broken and irregular character of the land which it is claimed he omitted from his survey and with the more or less primitive instruments with which he had to work, it must be conceded that on the whole his work was notably well done and remarkably accurate. The accuracy and faithfulness of Warren's work as a whole was recognized by Kidder himself in his report to the Commissioner of the

General Land Office, of which as a public and official document (being a report of the Supervisor of Surveys to the Commissioner), this Court will take judicial cognizance. This report is reproduced in full in the transcript of suit No. 160, entitled *United States of America v. C. W. Lane, et al.* (See record in No. 160, pages 192, *et seq.)*; and in it Mr. Kidder said:

> "With only one exception the original section lines as terminated upon the border of Ferry Lake show a proper recognition of the mean high water elevation of the raft period. I would not criticise the surveyor's judgment in the location of but one meander corner in the entire township and the meander lines along the lake front in Sections 1, 5, 8, 11, 17, 20, 26, 28, 31, 33 and 35 are reasonably correct.
>
> "The faithfulness of the early surveyors deputized by the United States to the performance of the great trust of establishing and marking for all time the lines defining the rights of her land patentees has been well demonstrated by the positive identification and recovery of the original lines after a period far beyond the span of the average human life. The deputy surveyors were called upon to explore and map a wild and remote virgin forest and swamp, to transport themselves and equipment by primitive methods, and to subsist themselves largely by hunting and fishing as best they could."

Moreover, in his testimony in the present case, Kidder admitted that Warren's meander lines in the northeast corner of Section 27 and also in Section 28 to the west of the land involved in this suit approximate very closely to the

contour line 173.09, which Kidder testifies was the proper contour line of Ferry Lake at the time of Warren's survey. (Record, page 121).

With all due respect, therefore, for the able surveyors and the learned ecologists and geologists who testified for the United States in this case and who criticised the Warren survey as erroneous and inaccurate at certain points where it varies from the present boundary of Ferry Lake, while admitting its general accuracy and faithfulness taken as a whole, we submit that Warren's map is much more likely to be a faithful picture of the outlines of Ferry Lake as they existed in 1839 and as he actually saw them at the time, than is the map of Kidder and his associates, who have attempted to reconstruct in their minds the conditions of eighty years ago and who have presented to the Court this theoretical reconstruction of what conditions should have been eighty years ago, in opposition to Warren's delineations of what they actually were as revealed to his physical vision.

We repeat that Warren's survey, made eighty years ago, is entitled to more weight as evidence of what conditions actually were eighty years ago than are the deductions of Kidder and the scientists co-operating with him, which deductions were arrived at by reasoning from facts and conditions found by them to exist in 1919, just as the evidence of a reputable and disinterested eye-witness as to how a crime was committed is entitled to more weight than the deductions of detectives and psycho-analysts, who did not

witness the commission of the crime, but reconstructed the scene from facts found by them some time later. Kidder's repeated declaration that Warren's survey was manifestly erroneous, was nothing more or less than the statement of a legal conclusion and meant nothing more than that Warren's survey, portraying conditions in 1839, did not agree in all respects with Kidder's survey portraying conditions in 1919. Under Kidder's theory, Warren's survey would have been "manifestly erroneous" if Warren had omitted nine acres, just as he considered it "manifestly erroneous" because, as he contends, Warren omitted 97.64 acres of broken and worthless ground in meandering the frontage of two whole sections bordering on Ferry Lake.

However, the correctness or incorrectness of Kidder's deductions as to the "manifest error" which he asserts Warren made in surveying the Northwest Quarter of Section 27 is really immaterial here, as it is clear, from an examination of a map of Warren's survey and a comparison of it with Kidder's survey eight years later, that Warren **intended** to delineate Ferry Lake; that he **intended** to embrace in the fractional Northwest Quarter of Section 27 all of the land lying between the north line of the Southwest Quarter of Section 27 and Ferry Lake; and it is obvious, as a matter of common sense and general information, that when Greene applied for a patent on the Northwest Quarter of Section 27 he was acting under the belief that he was acquiring the land adjoining Ferry Lake, on which he had actually settled and built a house and planted an orchard; and it is equally obvious that the government officials who

issued the patent to Greene believed about the matter as he did. When Greene settled on the land in controvrsy its chief value to him was its proximity to Ferry Lake, and it was the land adjoining Ferry Lake that he wanted to acquire and attempted to acquire; in other words, when Greene went to Ferry Lake and selected the land upon which he desired to settle and acquire a homestead, he actually selected the land in controversy in this suit, whether it be described as a fractional Northwest Quarter of Section 27 (as Warren shows it on his map), or whether it be described as Lots 2 and 3 of Section 27; and, in order to obtain a patent on it, he referred to the only official index for the proper description of the land that was at the time in existence, which official index was Warren's survey of Ferry Lake, and his reference to Warren's survey showed that the land was described as the fractional Northwest Quarter of Section 27.

The position of the United States in this suit is that of having induced Greene to settle on and improve the land in controversy under its homestead laws, of having advised him through its proper authorities that the description of the land he had selected under the homestead laws and upon which he had settled and built a house and planted an orchard, was the fractional Northwest Quarter of Section 27, and of having granted him a patent to the fractional Northwest Quarter of Section 27, which he and the government officials who granted the patent believed at the time embraced and covered the land he had actually settled upon and improved, and of nevertheless seeking in this suit to take away from Greene the identical land it induced him

to settle upon in reliance on the verity of its own official records by claiming that its own records were erroneous and by seeking to correct the errors in its own records to the prejudice of Greene and those holding under him. If this suit were between private individuals we do not believe that any Court would have given a moment's serious consideration to the plaintiff's claim, and the fact that the plaintiff is the United States should not affect the result of the suit in the slightest. The United States is just as much bound to observe principles of fair dealing and equity in asserting its rights against Greene in this case as a private individual would be, and in a Court of equity it should be as completely precluded from depriving Greene of the land he has acquired from it in good faith and in reliance upon the verity of its own records as an individual would be precluded under similar circumstances. Under the facts in this case, which are practically undisputed, there is no basis in equity or law for plaintiff's claim of ownership of the land on which it has induced Greene to settle under its homestead laws, which it held out to him as being embraced in the description of the land conveyed by his patent, which description was taken from its own and only map and survey; and the Circuit Court of Appeals so held.

It would, we think, be a useless waste of time to cite to this Court and quote at length from authorities to the effect that Ferry Lake and not its meander lines, as shown on Warren's survey, is to be taken as the boundary of Greene's land, but we think it worth while to reproduce here that

part of the opinion of the Circuit Court of Appeals which deals with the law of the case after reciting the facts as found by it:

> "The question, therefore, is:
>
> "Did the evidence in this case show that there was such a mistake in the Warren survey that the government can now have the same corrected against the present owners of the land conveyed by its patent?
>
> "These patents respectively conveyed the land mentioned therein 'according to the official plat of survey of said lands returned to the General Land Office by the surveyor general.' (This was the Warren survey.)
>
> "This constituted such plat a part of the deed, 'and controls so far as limits are concerned, as if such descriptive features were written out upon the face of the deed or the grant itself.' Cragin v. Powell, 128 U. S., 693; McIver's Lessee v. Walker, 9 Cranch, 173, 177; Jeffries v. East Omaha Land Co., 134 U. S., 178, 194-5; Chapman, et al., v. St. Francis Levee District, 232 U. S., 186, 197.
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> "The general rule, well established by decisions of the Supreme Court of the United States, is that where a meander line is run, if lands are described as bordering on a stream or body of water, the meander line is not a boundary, but the waters themselves constitute the boundary—the meander line being intended to ascertain the approximate acreage which is to be paid for. Railroad Co. v. Schurmeir, 7 Wall., 272, 286; Hardin v. Jordan, 140 U. S., 371, 380.

"The patent to the fractional part of section 27 held by defendants in the Greene case called for 147.25 acres The land claimed by the government as outside of this acreage is 65.77 acres, and the additional land involved in section 23 is about 8.30 acres, so that the land claimed by defendants is about fifty per cent in excess of the acreage given in said patents. The acreage covered by the patent under which defendants claim in the Loucks case is 123.49½ acres, and the land claimed by the government as outside of this acreage is 14.13 acres, so that the land claimed by defendants in the Loucks case is not quite one-fifth of the acreage named in the patent.

"The case is well within the rule that a meander line is not to be considered as a line of boundary, where the plat of survey shows a body of water as the boundary; but that there must be some absence of the body of water in the descriptions where shown on the plat, or another body of water which satisfies the natural object shown, although misnamed, or a notation of intervening land, such as a marsh, so that the plat when applied to the ground shows either a clear mistake as to the existence of the natural object or a purpose not to call for it as a boundary.

"The case of Mitchell v. Smale, 140 U. S., 406, 412, clearly demonstrates the above principle. There a fractional lot calling for 4½ acres was shown on the plat of survey as bounded by a lake. There was a point containing 25 acres outside of the meander lines, projecting into the lake. This 25 acres was subsequently surveyed by the Land Department and patented to another purchaser. The second patent

was held invalid and the land decided to have been conveyed by the first patent. The Court said:

" 'We think it a great hardship, and one not to be endured, for the government officers to have new surveys and grants to the beds of such lakes after selling and granting the lands bordering thereon, or represented so to be. It is nothing more nor less than taking from the first grantee a most valuable, and often the most valuable part of his grant. Plenty of speculators will always be found, as such property increases in value, to enter it and deprive the proper owner of its enjoyment; and to place such persons in possession under a new survey and grant, and put the original grantee of the adjoining property to his action of ejectment and plenary proof of his own title, is a cause of vexatious litigation which ought not to be created or sanctioned. The pretense for making such surveys, arising from the fact that strips and tongues of land are found to project into the water beyond the meander line run for the purpose of getting its general contour, and of measuring the quantity to be paid for, will always exist, since such irregular projections do always, or in most cases, exist. The difficulty of following the edge or margin of such projections, and all the various sinuosities of the water line, is the very occasion and cause of running the meander line, which by its exclusion of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream. The official plat made from such survey does not show the meander line, but shows the general form of the lake deducted therefrom, and the surrounding fractional lots adjoining and bordering on the

same. The patents when issued refer to this plat for identification of the lots conveyed, and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water, regularly follow.'

"That acreage is not controlling in limiting the grant is clearly shown by the above case. There are many others of the same purport.

"In Johnson v. Johnson, 24 L. R. A. (N. S.), (Idaho), 1251, the patent called for a tract of 86.06 acres. The natural object was held to be the boundary and to carry with it 143 acres.

"Where the survey mentioned in a patent calling for 80 acres depicted a lake as a boundary, and the meander line did not coincide with the lake shore, the lake was decided to be the boundary and the patent was held to convey 100 acres lying between the meander line and the lake. Barringer v. Davis, 120 Iowa, 428, 120 N. W., 65.

"See also Lindsey v. Hawes, 2 Black, 554, 560; Brown v. Huger, 21 How., 305; St. Clair v. Livingston, 23 Wall., 46, 63; Grand Rapids & Indiana R. R. Co. v. Butler, 159 U. S., 87; St. Anthony Falls Water Co. v. Board, etc., 168 U. S., 349; Chapman & Dewey v. St. Francis Levee District, 232 U. S., 186, 197.

"The decisions holding the meander line to be one of boundary all recognize the general rule to be as

above stated and rest on exceptions thereto. In the case of Horne v. Smith, 159 U. S., 40, the plat called for the Indian River as a boundary. There was a watercourse where the plat depicted the river and the mistake was in calling it Indian River. It was held that this watercourse (not a meander line) was the boundary intended and that the patent did not include a large tract of land, never surveyed, which lay between the bayou and Indian River.

"In Niles v. Cedar Point Club, 175 U. S., 300, the survey showed a tract of marsh or swamp lands beyond the meander line; the patent, therefore, was held to terminate at the meander line and not to carry the swamp lands lying between it and Lake Erie.

"In the present cases the plat of survey shows nothing as the meander line but the shore line of Ferry Lake.

"Where a plat called for a lake and there was no lake in front of the so-called meander line, but only one located outside of the side lines of the grant, it was held that the so-called meander line must be taken as the boundary instead of shifting the entire grant. French Glenn Live Stock Co. v. Springer, 185 U. S., 35.

"Upon the same principle, coupled with evidence of the fraudulent character of the survey, there being no lake or body of water at or near the spot indicated on the plat of survey, rests the decision in Security Land & Exploration Co. v. Burns, 193 U. S., 182, and also Lee, Wilson & Co. v. United States, 245 U. S., 34.

"The decision of the Supreme Court of the United States, in Producers' Oil Co. v. Hanzen, 238 U. S., 325, affirming the decision of the Supreme Court of Louisiana in 132 La., 691, lays down the general principle and illustrates the exceptions. There Bristol, a surveyor, made a survey of parts of section 3, 4, 9 and 10 of this township 20, and referred in his field notes to a spur of marsh extending 'cut north.' It was also admitted that the land in controversy was high land when the Bristol survey was made. This case establishes:

" 'As a general rule meanders are not to be treated as boundaries, and when the United States conveys a tract of land by patent, referring to an official survey which shows the same bordering on a navigable river, the purchaser takes title up to the water line.

" 'Where the facts and circumstances, however, affirmatively disclose an intention to limit the grant to actual traverse lines, these must be treated as definite boundaries; and a patent to a fractional section does not necessarily confer riparian rights because of the presence of meanders.

" 'Where, as in this case, the survey of improved lands was made at the express request of the occupant to whom they were subsequently patented, and the grant specified the number of acres, and other circumstances also indicated that only the lands conveyed were those within the traverse lines, the patent of the United States conferred no riparian rights, but simply conveyed the specified number of acres.'

"That the government has the right to make new surveys and correct errors in former ones does not

in any way limit the above general rule or create a different rule where such new survey is made.

"The right of the government to make such new surveys is clear, but where the United States has previously parted with the title a new survey does not conclude a prior purchaser from asserting whatever title he has acquired by his older patent as against one claiming under the new survey. Cragin v. Powell, 128 U. S., 696; Hardin v. Jordan, 140 U. S., 371, 400; Mitchell v. Smale, 140 U. S., 406; Hardin v. Shedd, 190 U. S., 508.

"This limitation on the effect of a new survey is recognized in the cases asserting the right of the government to make it. Thus, in Kirwan v. Murphy, 189 U. S., 35, while the right to order a new survey is upheld, it is expressly stated that the right of the existing grantee could be thereafter asserted.

"To the same effect is the decision in Lane, Secretary, v. Darlington, 249 U. S., 331.

"We think that the present cases are governed by the general rule above laid down and that the patents to said section 27 convey all of the land to the waters of Ferry Lake.

"The side lines of said section 27 terminate at the lake. The lake lies in the same relative position to said section as the Warren plat of survey indicates. It lies from a few feet to less than a quarter of a mile distant from Warren's meander line as now laid on the ground on the new survey. The omitted land was at the time of little value and broken by ravines. There is no evidence of any intention to grant only to the traverse lines, but the apparent purpose was to include all the land to the lake in

the survey. That in each of these cases the meander line, according to its calls, is not to be treated as a boundary; but that the patents referring to an official plat which shows the land granted as bordering on the lake, the patentee took title to the water line.

"The decree in each case is reversed on the appeal therein, with directions that the bill of complaint be dismissed by the District Court. Each cross appeal is dismissed."

We respectfully submit that the judgment of the Circuit Court of Appeals is correct, and should be affirmed.

Respectfully submitted,

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UNITED STATES *v.* LANE ET AL.

UNITED STATES *v.* GULF REFINING COMPANY OF LOUISIANA.

UNITED STATES *v.* SOUTHWESTERN GAS & ELECTRIC COMPANY ET AL.

UNITED STATES *v.* GULF REFINING COMPANY OF LOUISIANA.

UNITED STATES *v.* GREENE ET AL.

APPEALS FROM THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

UNITED STATES *v.* LOUCKS ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Nos. 160, 163, 162, 161, 192 and 191. Argued January 2, 3, 1923.—Decided January 22, 1923.

Lots patented under the public land laws according to a plat showing them bordering on a lake, extend to the water as a boundary and embrace pieces of land found between it and the meander line of the survey, where the failure to include such pieces within the meander was not due to fraud or mistake but was consistent with a reasonably accurate survey, considering the areas included and excluded, the difficulty of surveying them when the survey was made and their value at that time. P. 664.

274 Fed. 290, and 145, affirmed.

APPEALS and certiorari to review decrees of the Circuit Court of Appeals reversing decrees of the District Court favorable to the United States in suits asserting title to several parcels of land in Louisiana.

Mr. Assistant Attorney General Riter, with whom *Mr. Solicitor General Beck* was on the briefs, for the United States.

Mr. S. L. Herold, with whom *Mr. J. A. Thigpen*, *Mr. E. P. Lee*, *Mr. Hampden Story*, *Mr. J. D. Wilkinson* and *Mr. R. L. Batts* were on the briefs, for appellees in Nos. 160, 163, 162 and 161, and respondents in No. 191.

Mr. Elias Goldstein, with whom *Mr. H. C. Walker, Jr.*, *Mr. S. M. Cook*, and *Mr. Hampden Story* were on the brief, for appellees in No. 192.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

These suits involve claims of title on the part of the United States, hereinafter called the plaintiff, to various parcels of land lying along the border of Ferry Lake, a navigable body of water in Caddo Parish, Louisiana. Answering these claims, the defendants in the respective cases averred that plaintiff, long before the bringing of the suits, had conveyed by patents to private persons certain fractional subdivisions bordering on the lake; that these fractions were represented on the official plat of the government survey, made by one Warren in 1839 and duly approved and filed, as bounded on the lake side by the waters of the lake; that in each of the cases the land in controversy was a small tract, lying along the edge of the lake and constituting part of the particular fractional subdivision so conveyed; and that consequently, plaintiff had divested itself of whatever title it originally had.

Certain alternative defenses, based upon the alleged ownership of the lands by the State of Louisiana, were pleaded, but, in view of the conclusions we have reached, it is not necessary to consider them. The District Court entered decrees for the plaintiff which the Circuit Court of Appeals reversed (274 Fed. 145, 290), and the cases are here upon appeal except the Loucks case, which comes on certiorari. The foregoing averments of fact contained in the answers are established by the record.

In 1916–1917, nearly eighty years after the Warren survey—the lands in the meantime having become valuable for their deposits of oil and gas—a new survey was made under the direction of the General Land Office. This survey shows that the line run by Warren, purporting to meander the shore of the lake, did not in all instances coincide precisely with the water's edge. In the four cases first named in the title, the parcels of land lying between the meander line and the lake are of small extent. The meander line throughout its length approximately conforms to the sinuosities of the shore, sometimes, however, running for short distances inland and sometimes for short distances into and through the water. In the first mentioned suit the Warren survey indicates a fractional subdivision containing 26.80 acres, the new survey adds 5.67 acres. In the second suit the Warren survey indicates 23 acres, the new survey adds 12.72 acres. In the third suit the Warren survey indicates 155 acres, the new survey adds 27.87 acres. In the fourth suit the Warren survey indicates 114.80 acres, and the new survey adds 11.49 acres.

The lands in question are all in township twenty, the first mentioned being in section 3, the second in section 10, the third in section 13 and the last in section 24. Following the meander line of the Warren survey the distance from the first of these tracts to the last is about five miles. Leaving out of consideration the large tract involved in *Producers Oil Co.* v. *Hansen*, 238 U. S. 325, and the large tract involved in *Jeems Bayou Fishing & Hunting Club* v. *United States*, *ante*, 561, the aggregate of the various parcels lying outside the meander line is about 70 acres, and the aggregate of the various areas of water included within the meander line is about 44 acres. The facts bring the cases fairly within the rule announced by this Court in *Mitchell* v. *Smale*, 140 U. S. 406, and not within the exception which was followed in the *Jeems*

Bayou Case. So far as the instant cases are concerned, there is nothing in the circumstances to suggest the conclusion that any fraud was committed or palpable mistake made by Warren. At the time of his survey the lands were of such little value, the locality so wild and remote, and the attendant difficulties so great that the expenditure of energy and money necessary to run the lines with minute regard to the sinuosities of the lake would have been quite out of proportion to the gain. We are of opinion that the survey of 1839, except as to the two large tracts just mentioned, is not open to challenge. The precisely accurate survey of 1916–1917 would probably never have been made but for the greatly increased value of the lands due to the discovery of oil and gas therein. It is unnecessary to do more than quote the language of this Court in *Mitchell* v. *Smale, supra*, 413:

"The pretence for making such surveys, arising from the fact that strips and tongues of land are found to project into the water beyond the meander line run for the purpose of getting its general contour, and of measuring the quantity to be paid for, will always exist, since such irregular projections do always, or in most cases, exist. The difficulty of following the edge or margin of such projections, and all the various sinuosities of the water line, is the very occasion and cause of running the meander line, which by its exclusions and inclusions of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream. The official plat made from such survey does not show the meander line, but shows the general form of the lake deduced therefrom, and the surrounding fractional lots adjoining and bordering on the same. The patents when issued refer to this plat for identification of the lots conveyed, and are equivalent to and have the legal effect of a declaration that they extend to and are

bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water, regularly follow."

While the facts are somewhat different and the extent of the omission somewhat greater, we think the general rule should, likewise, be applied in the remaining two cases. The Warren survey and plat here indicate an area of about 271 acres in the fractional subdivisions conveyed. The lands added by the new survey constitute a compact body of 97.54 acres—65.77 acres of which are involved in the Greene case and 14.13 acres in the Loucks case—having the outline of a long and rather irregular crescent, with the outer curve next to the water. The inner boundary, running between the two points of the crescent, is made up of a series of straight lines, with intervening angles conforming to the outlying curve only to a roughly approximate degree. The length of the tract is nearly 4,000 feet and the extreme width about 1,200 feet. Running back from the shore there are numerous ravines, creating, in and along the outer rim of the tract, a series of alternating points and indentations. The evidence justifies the conclusion that in 1859, and especially in time of high water reaching back into the ravines, the establishment of a line precisely coincident with the water's edge would have been a matter of expense and difficulty wholly disproportionate to the then value of the omitted acreage. As in the four cases first discussed, the Warren plat of the survey referred to in the patent represents the lake as the boundary. The survey, taken as a whole, with the exception of two large tracts already mentioned, follows with a fair degree of accuracy the contour of the lake and the evident purpose was to include in it all the land to the water's edge. Considering

the circumstances in respect of the character and value of the lands, the wildness and remoteness of the region and the difficulties surrounding the work of the surveyors, the failure to run the lines with more particularity was not unreasonable and we are constrained to agree with the lower court in holding that the waters of the lake and not the traverse line constitute the boundary.

The decrees of the Circuit Court of Appeals in all the cases are, therefore,

Affirmed.